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284719—

CITATIONS

Miscellaneous—Continued

In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 407

ROBERT NORBERT GALVAN, PETITIONER

v.

U. L. PRESS, OFFICER IN CHARGE, IMMIGRATION AND NATURALIZATION SERVICE, UNITED STATES DEPARTMENT OF JUSTICE, SAN DIEGO, CALIFORNIA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINION BELOW

The opinion of the Court of Appeals (R. 27–34) is reported at 201 F. 2d 302.

JURISDICTION

The judgment of the Court of Appeals was entered on January 9, 1953 (R. 35), and a petition for rehearing was denied on March 9, 1953 (R. 36). The petition for a writ of certiorari was filed on May 25, 1953, and was granted on October

12, 1953. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether Section 22 of the Internal Security Act of 1950, providing for the deportation of aliens who have been members of the Communist Party at any time after entering the United States, is constitutional.

2. Whether the evidence adduced at the administrative hearings was sufficient to sustain the charge on which the order of deportation was based.

STATUTE INVOLVED

As amended by Section 22 of the Internal Security Act of 1950 (64 Stat. 1006), the Act of October 16, 1918 (40 Stat. 1012), as amended, provided, at the time involved in this case, as follows (8 U. S. C. 137, Supp. V):[1]

[8 U. S. C. 137]

* * * * *

> Any alien who is a member of any one of the following classes shall be excluded from admission into the United States:

* * * * *

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[1] These statutory provisions were repealed by Section 403 (a) (16) of the Immigration and Nationality Act of June 27, 1952 (66 Stat. 163, 279), which recodified and reenacted these provisions without material change. See *id.*, Section 241 (a), 66 Stat. 204.

(2) Aliens who, at any time, shall be or shall have been members of any of the following classes:

* * * * *

(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States, * * * (iv) the Communist or other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state * * *;

* * * * *

(F) Aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches (i) the overthrow by force or violence or other unconstitutional means of the Government of the United States or of all forms of law: * * *;

(G) Aliens who write * * * any written or printed matter * * * advocating or teaching * * * (i) the overthrow by force or violence or other unconstitutional means of the Government of the United States or of all forms of law; * * *;

(H) Aliens who are members of or affiliated with any organization that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, * * * written or printed matter

of the character described in subparagraph (G).[2]

[8 U. S. C. 137–3] * * *

(a) Any alien who was at the time of entering the United States, or has been at any time thereafter, * * * a member of any one of the classes of aliens enumerated in section 137 (2) of this title, shall, upon the warrant of the Attorney General, be taken into custody and deported * * *.

STATEMENT

Petitioner was born in Mexico on June 6, 1911, and is a citizen of that country (T. 174).[3] He first entered the United States on March 13, 1918, when he was six and one-half years old, and has resided in this country since that time (T. 175). On March 17 and again on March 31, 1948, petitioner was questioned under oath by representatives of the Immigration and Naturalization Service. Although fully warned that he was not required to make a statement and that any statement he made might be used against him, on both occasions he testified fully and freely concerning

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[2] The substance of subsections (F), (G), and (H) of 8 U. S. C. (Supp. V) 137 (2) was, at the time of the original warrant of arrest in the instant case, contained in 8 U. S. C. (1946 ed.) 137 (c), (d), and (e). Subsection (C) derived from Section 22 of the Internal Security Act of 1950, 64 Stat. 1006.

[3] The record in the instant case is in two parts, the record of proceedings in the Court of Appeals, herein designated "R." and the record of proceedings in the District Court, designated "T."

his membership in the Communist Party from 1944 to 1946. His testimony was that the last Party meeting he attended was about January 1947. He offered to rejoin the party and act as an agent for the Government to obtain information about it in exchange for the right to remain in this country. (T. 177–182.)

On August 13, 1948, a deportation warrant for the arrest of petitioner was issued, which charged that he was deportable in that he had been, after entry, a member of an organization which advocated violent overthrow of the Government, and of an organization distributing written matter so advocating (T. 168). This warrant was served on petitioner on March 10, 1949, and on that day an initial deportation hearing, acquainting petitioner with the charges against him, was conducted at which petitioner was represented by counsel of his own choice. At the conclusion of the hearing, petitioner was released on bond (T. 68–76).

On January 12, 1950, a second hearing was conducted at which petitioner was again represented by counsel of his choice (T. 78). At this hearing petitioner refused to answer any questions concerning his Communist connections on the ground that such answers might incriminate him. The two statements which he had made in 1948 were admitted in evidence, without objection, after the immigrant inspector who had

taken the statements testified as to the circumstances in which they were taken (T. 82). In addition, a former member of the Communist Party, Mrs. Jona Cooley Meza, testified that in 1946 she and petitioner had been members of a Communist Party unit in San Diego, the Spanish Speaking Club Unit; that petitioner had attended several meetings which were open only to Party members; and that he had been elected to the office of Educational Director of the Unit (T. 110–127).[4]

These hearings were rendered invalid by the decision of this Court in *Sung* v. *McGrath,* 339 U. S. 33, holding that the Administrative Procedure Act was applicable to deportation proceedings.[5]

On December 12, 1950, petitioner was given a *de novo* hearing, at which he was again represented by counsel of his own choice (T. 33). At this hearing, by agreement of the parties, the transcript of the hearings held on March 10, 1949, and January 12, 1950, together with the Exhibits (including the sworn statements petitioner made in March 1948), were "made part of the present hearing * * * to be used in determining the facts in this case" (T. 34).

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[4] The details of petitioner's membership in the Party are set forth more fully in Point II, *infra*, pp. 70 *ff.*

[5] On September 27, 1950, Pub. L. 843, 81st Cong., 64 Stat. 1044, 1048, exempted deportation hearings conducted thereafter from the hearing provisions of the Administrative Procedure Act.

Immediately thereafter, the examining officer lodged an additional charge against petitioner, that he was deportable under Section 22 of the Internal Security Act of 1950 (which became law on September 23, 1950) (*supra*, pp. 2–4) in that he had been, after entry, a member of the Communist Party. The hearing officer asked petitioner's counsel whether, in view of the additional charge, he desired a continuance of the hearing for a period of five days, to which counsel replied that he did not (T. 36). At this hearing in December 1950, petitioner denied that he had ever been a member of the Communist Party, and attempted to explain away his 1948 statements. He said that he had not understood what the examining officer meant by "Communist Party," thinking that he was referring to other organizations to which he belonged and meetings which he had attended (T. 37–50).

On December 19, 1950, the hearing officer found that petitioner had been a member of the Communist Party from 1944 to 1946, and ordered his deportation on that ground (T. 31–32). On July 25, 1951, the findings and decision of the hearing officer were adopted by the Assistant Commissioner, and, on September 26, 1951, an appeal was dismissed by the Board of Immigration Appeals on the ground that the evidence of record showed that, following his entry into the United States, petitioner became a member of the Communist Party of the United States.

On December 17, 1951, petitioner filed in the District Court for the Southern District of California a petition for a writ of habeas corpus (R. 2–5). After a hearing (R. 11), the petition was denied (R. 13–17). On appeal, the Court of Appeals affirmed the order of the District Court (R. 27–34).

SUMMARY OF ARGUMENT

I

Section 22 of the Internal Security Act of 1950, prescribing the deportation of past members of the Communist Party, is valid and applicable to petitioner.

A. As the Court has repeatedly held since 1893, Congressional decisions to deport classes of aliens are political determinations not normally reviewable by the judiciary. The legislative power is "plenary" (*Carlson* v. *Landon,* 342 U. S. 524, 534); the courts cannot intervene unless, perhaps, the action of Congress is a "fantasy or a pretense" or has "no possible grounds" to support it (*Harisiades* v. *Shaughnessy,* 342 U. S. 580, 590). The authority and the responsibility belong to Congress, and this Court and the lower courts have consistently upheld and enforced expulsion laws which have seemed to many to be harsh, discriminatory, or unfair, because judges have no concern with the "wisdom", "policy", "justice", or "severity" of those measures. *E. g., Fong Yue Ting* v. *United States,* 149 U. S. 698; *Turner*

v. *Williams,* 194 U. S. 279; *Tiaco* v. *Forbes,* 228 U. S. 549; *Ludecke* v. *Watkins,* 335 U. S. 160; *Harisiades* v. *Shaughnessy,* 342 U. S. 580. As against a legislative decree terminating their license to remain here, aliens (who have a divided allegiance and are not full members of the community) cannot call upon constitutional protections as broad as those available to citizens. Conversely, because the nation's policy toward aliens touches so directly upon the conduct of foreign affairs, the political branches have full sway.

B. The validity of Section 22 is directly supported, not only by these traditional principles, but also by the recent decisions in *Harasiades,* 342 U. S. 580, and *Carlson,* 342 U. S. 524, 535–6. The latter held Section 22 valid as applied to present Communists, and the former sustained the prior deportation statute* as applied in 1952 to aliens who were members of the Communist Party before 1940, even though there was no showing that the aliens themselves advocated or knew that the Party advocated violent overthrow of the Government. The two decisions, read together, cover petitioner's case which does not differ in its facts from instances before the Court in *Hari-*

* Section 23 (c) of the Alien Registration Act of 1940, 8 U. S. C. (1946 ed.) 137, subjecting to deportation aliens who, at any time after entry, had been members of an organization advocating the overthrow of the Government by force and violence.

siades and its companion cases. His argument is mainly a reargument of points already considered in that decision.

The only difference, as applied here, between Section 22 of the 1950 Act and the 1940 Act upheld in *Harisiades* is the specification in the 1950 statute of membership in the Communist Party as a basis for deportation, thus removing the necessity of proving again and again in deportation cases the nature and objectives of the Party. Congress based this determination upon overwhelming evidence, received by its committees between 1931 and 1950, that the Communist Party has as its purpose the violent overthrow of the Government of the United States and serves as a fifth column for the Soviet Union, largely through the aid of alien Communists. These conclusions are buttressed by repeated judicial decisions since 1920 as to the nature and purposes of the Communist Party, by some 200 administrative determinations in deportation cases since that time, as well as by the record of persistent espionage, sabotage, and propaganda by Communists here and elsewhere on behalf of the Soviet Union. In view of the purposes of the Party as found by Congress, Section 22 is a reasonable exercise of the legislative power to provide for the deportation of any class of aliens whose presence in this country may endanger the security of the United States. The ending of the alien's theoretical right to a hearing on the nature of the Communist Party is not a significant difference from *Harisiades*.

The power of Congress to name the Communist Party specifically is also supported by the history of the country's expulsion legislation which contains some famous precedents for group designation without regard to individual worthiness. The Chinese deportation laws are the prime illustration. The Alien Enemy Act of 1798, on which Congress drew by way of analogy, is another, as is the anarchist deportation statute.

C. The reaffirmation in *Harisiades* that deportation is not a punishment for the purposes of the *ex post facto* clause of the Constitution disposes of petitioner's belated contention that Section 22 is a bill of attainder (as well as an *ex post facto* law), since a bill of attainder is a legislative act which inflicts *punishment* without trial. *United States* v. *Lovett,* 328 U. S. 303, 315.

D. The First Amendment is not violated by petitioner's deportation since he was a member of the Communist Party and *Harisiades* expressly holds (342 U. S. at 592) that deportation for past membership in that Party does not abridge First Amendment rights. Moreover, his membership came during the period (1945–1947) covered by *Dennis* v. *United States,* 341 U. S. 494.

E. Just as was the case with the 1940 statute enforced in *Harisiades,* the 1950 Act does not require knowledge by the alien of the Communist Party's advocacy of the forcible overthrow of the Government. The history, since 1918, of this class of deportation legislation plainly shows that personal advocacy or knowledge is not a prerequisite.

II

There was sufficient evidence to sustain the charge that petitioner had been a member of the Communist Party in San Diego, California, from at least 1945 to 1947. Petitioner's own admissions of membership and active participation are unequivocal, and these admissions indisputably relate to a period after the Party was reconstituted in 1945. In addition, there was testimony by a fellow member that petitioner was an active Party member in 1946 and 1947 and was elected to office in his local Party unit. Petitioner's current attacks on his own admissions and the Government witness' testimony fall far short of showing that there is no substantial evidence behind the administrative finding. *Cf. Tisi* v. *Tod,* 264 U. S. 131, 133; *Vajtauer* v. *Commissioner,* 273 U. S. 103.

ARGUMENT

I

CONGRESS HAS THE POWER TO PROVIDE, AS IN SECTION 22 OF THE INTERNAL SECURITY ACT OF 1950, FOR THE DEPORTATION OF ALIENS WHO AT ANY TIME AFTER ENTRY HAVE BEEN MEMBERS OF THE COMMUNIST PARTY

Petitioner contends that the Act of October 16, 1918, as amended by Section 22 of the Internal Security Act of 1950, *supra,* pp. 2–4, which provides for the deportation of aliens who joined the Communist Party at any time after entering the

United States, is invalid. This question was briefed, though not decided, in *Heikkila* v. *Barber,* 345 U. S. 229, and *Martinez* v. *Neelly,* 344 U. S. 916 (see Govt. Br., No. 426, Oct. Term 1952, pp. 16–36, and Govt. Br., No. 218, Oct. Term 1952, pp. 63–70). In the perspective of the long history of judicial noninterference with legislative determinations regarding the expulsion of aliens, together with explicit Congressional findings as to the subversive aims and revolutionary methods of the Communist Party, as well as this Court's definitive opinions in *Harisiades* v. *Shaughnessy,* 342 U. S. 580, and *Carlson* v. *Landon,* 342 U. S. 524, we believe that this contention is without merit.

A. DECISIONS OF CONGRESS TO DEPORT CLASSES OF ALIENS ARE POLITICAL DETERMINATIONS WHICH THIS COURT HAS HELD ARE NOT REVIEWABLE BY THE JUDICIARY

As this Court declared, at its last Term, in *Shaughnessy* v. *Mezei,* 345 U. S. 206, 210: "Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." The reasons for this judicial abstention have been stated so recently and so fully in *Harisiades* v. *Shaughnessy,* 342 U. S. 580, that it is unnecessary to set them forth again in any detail.[7] But

[7] See the Brief for the United States in the *Harisiades* case (and companion cases), Oct. Term, 1951, Nos. 43, 206, 264, which contains an extensive discussion of the history and the problem.

it is pertinent to recall—particularly since petitioner's brief wholly ignores them—the repeated holdings and declarations of this principle which the Court has made in the sixty year span from 1893 to 1953. These consistent reaffirmations have set the pattern for the decision of this and all cases testing the substantive validity of deportation statutes.

1. The doctrine initially derived from decisions of this Court which established legislative finality with respect to the exclusion of aliens. The principle, as it relates to exclusion, was firmly stated in the opinion in *The Chinese Exclusion Case,* 130 U. S. 581, 605, 606–607, where the Court observed that either in time of peace or in wartime, if the Government "through its legislative department" finds the presence of a class of foreigners to be inimical to our security, the legislature's determination is "conclusive upon the judiciary." Subsequently, in 1893, in the first expulsion case to come before this Court *Fong Yue Ting* v. *United States,* 149 U. S. 698, the Court, after quoting from *The Chinese Exclusion Case,* declared (149 U. S. at 707):

> The right of a nation to expel or deport foreigners, who have not been naturalized or taken any steps towards becoming citizens of the country, rests upon the same grounds, and is as absolute and unqualified as the right to prohibit and prevent their entrance into the country.

The Court then summarized the differing positions of the legislative and the judicial branches in this field:

> [1] The Court should "be careful that it does not undertake to pass upon political questions, the final decision of which has been committed by the Constitution to the other departments of the government" (149 U. S. at 712);
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> [2] "The power to exclude or to expel aliens, being a power affecting international relations, is vested in the political departments of the government * * *" (149 U. S. at 713); and
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> [3] Accordingly, "The question whether, and upon what conditions, these aliens shall be permitted to remain within the United States being one to be determined by the political departments of the government, the judicial department cannot properly express an opinion upon the wisdom, the policy or the justice of the measures enacted by Congress in the exercise of the powers confided to it by the Constitution over this subject." (149 U. S. at 731.)

Aliens "remain subject to the power of Congress to expel them, or to order them to be removed and deported from the country, whenever in its judgment their removal is necessary or expedient for the public interest" (149 U. S. at 724).

Such unrestrained power to terminate the residence of aliens, the Court explained, was not inconsistent with prior decisions holding that

resident aliens enjoyed the protection of constitutional safeguards, including the due process clause. Referring to *Yick Wo* v. *Hopkins,* 118 U. S. 356, holding that aliens were protected by the due process and equal protection clauses of the Fourteenth Amendment, the Court declared: "The question there was of the power of a State over aliens continuing to reside within its jurisdiction, not of the power of the United States to put an end to their residence in the country" (149 U. S. at 725). Thus, while resident aliens are entitled to the privileges and immunities guaranteed by the Constitution in domestic matters, including procedural due process in deportation proceedings (see, e. g., *Japanese Immigrant Case,* 189 U. S. 86, 100; *Wong Yang Sung* v. *McGrath,* 339 U. S. 33), the designation by Congress of classes of undesirable and deportable or excludable aliens pertains to international relations and is a political determination which "is conclusive upon the judiciary." *The Chinese Exclusion Case, supra,* 130 U. S. at 606.

No later decision of this Court has repudiated or modified this principle of full Congressional power to deport, and the Court has frequently reasserted it. *Lem Moon Sing* v. *United States,* 158 U. S. 538, 545, 547; *Wong Wing* v. *United States,* 163 U. S. 228, 231, 235, 237; *Li Sing* v. *United States,* 180 U. S. 486, 495; *Fok Yung Yo* v. *United States,* 185 U. S. 296, 302; *Japanese*

Immigrant Case, 189 U. S. 86, 97–100; *Turner* v. *Williams,* 194 U. S. 279, 289–291; *Low Wah Suey* v. *Backus,* 225 U. S. 460, 467–8; *Tiaco* v. *Forbes,* 228 U. S. 549, 556–557; *Bugajewitz* v. *Adams,* 228 U. S. 585, 591; *Ng Fung Ho* v. *White,* 259 U. S. 276, 280; *Mahler* v. *Eby,* 264 U. S. 32, 39, 40; *United States ex rel Volpe* v. *Smith,* 289 U. S. 422, 425; *United States* v. *Curtiss-Wright Corp.,* 299 U. S. 304, 318; *Harisiades* v. *Shaughnessy,* 342 U. S. 580; *Carlson* v. *Landon,* 342 U. S. 524, 534; *Shaughnessy* v. *Mezei,* 345 U. S. 206, 210; cf. *United States* v. *Ju Toy,* 198 U. S. 253, 261; *Zakonaite* v. *Wolf,* 226 U. S. 272, 275; *Lapina* v. *Williams,* 232 U. S. 78, 88; *Kwong Hai Chew* v. *Colding,* 344 U. S. 590, 597–8.[8]

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[8] Cases which have sometimes been cited as modifying this principle have all involved determinations by the executive that a certain alien was a member of a deportable class previously established by the legislature, rather than a decision of Congress to deport a class of aliens whom it deemed undesirable residents. Only the latter is a political decision on a matter fundamentally affecting the public security. The administrative determination that a particular alien is a member of that class is a quasi-judicial determination, in the making of which the procedure employed must conform to procedural due process, since resident aliens are accorded the protection of the Constitution (*Yick Wo* v. *Hopkins, supra; Japanese Immigrant Case, supra; Wong Yang Sung* v. *McGrath, supra*). These cases do not hold, or state, that the due process clause restricts congressional decision with respect to the deportability of a class of undesirable aliens. Indeed, the very cases holding aliens entitled to procedural due process cite with approval the substantive constitutional doctrine of the *Fong Yue Ting* case. The most recent in-

Harisiades v. *Shaughnessy*, 342 U. S. 580, which we view as controlling here (see *infra*, pp. 29 *ff*), is but the latest application of the doctrine. The Court was asked to decide whether a provision calling for the expulsion of aliens who had at any time after entry into the United States belonged to an organization advocating the violent overthrow of the Government[9] violated the due process clause of the Fifth Amendment. As in past decisions in this area, the Court observed (342 U. S. at 588–589):

> It is pertinent to observe that any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government. Such matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference.

The Court concluded (342 U. S. at 591) that, "in the present state of the world,"

> it would be rash and irresponsible to reinterpret our fundamental law to deny or

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stance is *Kwong Hai Chew* v. *Colding*, 344 U. S. 590, 597–598, where this Court, citing the *Fong Yue Ting* case, declared, "Although Congress may prescribe conditions for his expulsion and deportation, not even Congress may expel him without allowing him a fair opportunity to be heard."

[9] Section 23 (a) of the Alien Registration Act of 1940, 8 U. S. C. 137.

> qualify the Government's power of deportation. However desirable world-wide amelioration of the lot of aliens, we think it is peculiarly a subject for international diplomacy. It should not be initiated by judicial decision which can only deprive our own Government of a power of defense and reprisal without obtaining for American citizens abroad any reciprocal privileges or immunities. Reform in this field must be entrusted to the branches of the Government in control of our international relations and treaty-making powers.

It is true that the Court refrained from making an explicit reassertion of the proposition that under the Constitution the judiciary is wholly without power to override a legislative finding that a particular class of aliens is deportable, stating that the above-quoted "restraints upon the judiciary," while pertinent, did "not control today's decision * * *" (342 U. S. at 589–590). There was not, however, any repudiation of the legislative finality first established by the *Fong Yue Ting* case, *supra.* On the merits, the deportation provision in question was held to be a reasonable one in the light of the Congressional power and Congressional responsibility in the area of foreign affairs and national security. And on the same day as *Harisiades* the Court used, in *Carlson* v. *Landon,* 342 U. S. 524, 534, words which are directly linked to the historic principle of the *Fong Yue Ting* case:

> So long, however, as aliens fail to obtain and maintain citizenship by naturalization, they remain subject to the *plenary power of Congress* to expel them under the sovereign right to determine what noncitizens shall be permitted to remain within our borders [emphasis added].

The *Harisiades* and *Carlson* cases, while perhaps withholding final judgment as to whether the judiciary is absolutely devoid of all power to review an expulsion measure, at least make it perfectly clear that such a measure must be allowed to stand unless it can be said that the menace perceived by Congress is a "fantasy or a pretense," that there are "no possible grounds on which Congress might believe" that continued American residence of the designated class of aliens was "inimical to our security" (342 U. S. at 590). Judicial review of a legislative determination that a certain class of aliens is undesirable or a threat to our security is thus very narrowly circumscribed, if indeed, in the present state of the world, it exists at all. Where Congressional power is "plenary", judicial authority to restrain, if there be any, is necessarily at its minimum.[9a]

2. In the sixty years since *Fong Yue Ting* was decided in 1893, the federal courts have consistently recognized and applied deportation provisions which have seemed to many—including some

[9a] See also the Brief for the Appellee in No. 195, this Term, *International Longshoremen's and Warehousemen's Union* v. *Boyd*, at pp. 58 *et seq.*

of the judges who have enforced them—to be harsh, discriminatory, or unfair. These laws have been upheld and enforced because the responsibility has been wholly Congress', and the courts have not swerved from a conscientious adherence to the view that the judicial branch has no concern with the "wisdom", "policy", "justice", or "severity" of these measures. *Fong Yue Ting* v. *United States,* 149 U. S. at 731; *Li Sing* v. *United States,* 180 U. S. 486, 495.

The *Fong Yue Ting* case itself upheld a statute which permitted the deportation of a Chinese laborer who had lawfully entered and had lived here for over a decade, solely because he could not prove his lawful residence by a white witness, as required by the statute and regulations, although he could and did prove that he was entitled to remain by Chinese witnesses. 149 U. S. at 703–4, 729–730, 732.[10] And where a Chinese person claimed American citizenship, the burden of proving non-alienage rested on him, although in all other cases the Government had the burden

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[10] Previously, the Court had held in *The Chinese Exclusion Case*, 130 U. S. 581, that Congress could exclude a Chinese alien who, after lawful residence in the United States for 12 years (1875–1887), had taken a temporary trip to China, and had returned to this country one week after the passage of the Chinese Exclusion Act of 1888, even though he had been issued a certificate when he left entitling him to reenter and the Exclusion Act had become law after he departed from China on his return voyage. This was an exclusion case, but the alien had had a twelve-year residence in the United States. Cf. *Kwong Hai Chew* v. *Colding*, 344 U. S. 590.

of showing alienage. See *Bilokumsky* v. *Tod,* 263 U. S. 149, 153.

Turner v. *Williams,* 194 U. S. 279, indicated that Congress would be competent to exclude or deport aliens who were anarchists only in the sense that they philosophically opposed all organized government, but who did not believe in achieving that ideal through force. 194 U. S. at 294.[11] *Tiaco* v. *Forbes,* 228 U. S. 549, affirming 16 Phil. 534, sustained what was in effect a private deportation act by the Philippine legislature ratifying the Governor General's executive expulsion of 12 resident Chinese aliens who were considered by him to be undesirable and a menace to public order; no hearing was held. The Court expressly declared that Congress could have taken the same action.

Ludecke v. *Watkins,* 335 U. S. 160, upheld the executive's power under the Alien Enemy Act of 1798 to remove, after the close of hostilities, enemy aliens some of whom might be personally loyal to the United States. See *Harisiades* v. *Shaughnessy,* 342 U. S. 580, 587, and *infra,* pp. 29–36, 56–60. Similarly, aliens have been held deportable for knowingly having in their possession, for the purpose of distribution, printed mat-

[11] Turner was arrested some 10 days after his entry and ordered deported on the ground that he came into the country in violation of the prohibition on entry of anarchists. 194 U. S. at 281.

ter advocating the forcible overthrow of the Government, although there was no proof that they personally held that conviction. *Tisi* v. *Tod,* 264 U. S. 131. With the admonition that "judicially, we must tolerate what personally we may regard as a legislative mistake" (342 U. S. at 590), *Harisiades* sustained the deportation of past Communists who may have fully cleansed themselves of all Party taint and who, even while members, did not personally advocate violence or know the Party's tenets. See *infra,* pp. 29 *ff.*

Because the statute required deportation of aliens twice convicted of crimes involving moral turpitude, the Second Circuit, through Judge Learned Hand, upheld a deportation order against a young American-reared alien twice found guilty of burglary, even though it thought that deportation would be "deplorable", with a "cruel and barbarous result" which would be a "national reproach". *United States ex rel Klonis* v. *Davis,* 13 F. 2d 630 (C. A. 2).[12] Though the case was

[12] The court said (13 F. 2d 630, 630–1):

"At any rate we think it not improper to say that deportation under the circumstances would be deplorable. Whether the relator came here in arms or at the age of ten, he is as much our product as though his mother had borne him on American soil. He knows no other language, no other people, no other habits, than ours; he will be as much a stranger in Poland as any one born of ancestors who immigrated in the seventeenth century. However heinous his crimes, deportation is to him exile, a dreadful punishment, abandoned by the common con-

extreme and the judge unusually outspoken, these words epitomize the traditional judicial attitude, both in this Court and the lower federal courts, toward deportation legislation—the power and the responsibility belong to Congress and the courts cannot and should not intervene in judgment, no matter how appealing the alien's contention or severe the legislative decree.[13]

3. These settled principles prove the basic error in petitioner's repeated analogy to cases concerning public employment and public office (Pet. Br. 35–39, 42, 48–49).[14] Aliens are not in the same

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sent of all civilized peoples. Such, indeed, it would be to any one, but to one already proved to be incapable of honest living, a helpless waif in a strange land, it will be utter destruction. That our reasonable efforts to rid ourselves of unassimilable immigrants should in execution be attended by such a cruel and barbarous result would be a national reproach."

[13] For other pointed expressions of this attitude, see *The Chinese Exclusion Case*, 130 U. S. 581, 609; *Fong Yue Ting* v. *United States*, 149 U. S. 698, 731; *Li Sing* v. *United States*, 180 U. S. 486, 495; *Harisiades* v. *Shaughnessy*, 342 U. S. 580, 590, 596–598; *Shaughnessy* v. *Mezei*, 345 U. S. 206, 216; *Latva* v. *Nicolls*, 106 F. Supp. 658 (D. Mass.).

[14] Petitioner uses this analogy largely to support his argument that aliens cannot be deported for past membership which was without knowledge of the Communist Party's subversive aims. But it is noteworthy that none of the public employment cases on which he relies involved only past membership in the Party itself, as distinguished from "front" organizations. Membership in the Party itself may have a different status, even for public employees. Cf. Section 241 (a) (6) (E) of the Immigration and Nationality Act of 1952, 66 Stat. 205, which differentiates Communist-front organiza-

category as citizens who are public servants or seek to become such. The latter, because they are citizens and full members of the American body politic, have certain substantive rights against discriminatory treatment—*e. g.*, because of race, or color, or belief—which the courts will protect even as against legislatures. See *Wieman* v. *Updegraff*, 344 U. S. 183, 191–2; *United Public Workers* v. *Mitchell*, 330 U. S. 75, 100. But the alien, as every opinion since the *Chinese Exclusion* case shows (*supra*, p. 14 *ff*), has a different and much more precarious status when the question is one of his exclusion or expulsion. He is not a full member of the political community, and the legislature's power to separate or exclude him is not limited, as with citizens, but "plenary" (342 U. S. at 534) and "largely immune from judicial control" (345 U. S. at 210). "Under our law, the alien in several respects stands on an equal footing with citizens, but in others has never been conceded legal parity with the citizen. Most importantly, to protract this ambiguous status within the country is not his right but is a matter of permission and tolerance. The Gov-

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tions from the Communist Party, for deportation purposes, by excusing from deportation aliens who can show that they did not know or have reason to know that the "front" organization was a "front".

Mascitti, whose case was decided along with *Harisiades*, 342 U. S. 580, presented the same analogy in his brief to this Court in 1951 (see Brief for the Appellant, Oct. Term, 1951, No. 206, pp. 30–2).

ernment's power to terminate its hospitality has been asserted and sustained by this Court since the question first arose" (*Harisiades* v. *Shaughnessy,* 342 U. S. 580, 586–7, footnotes omitted).

A simple historical comparison of the statutory classes of excludable and deportable aliens [15] with the legislative categories of persons who must be excluded or separated from the public service demonstrates that alien legislation has been founded on racial and other considerations normally inadmissible in the regulation of government employment. The Chinese exclusion and deportation laws are, of course, the prime example (see, *supra,* pp. 14–16, 21–22; *infra,* pp. 55–56); the national origin and quota systems are others. See also *Turner* v. *Williams,* 194 U. S. 279, 294 (alien anarchists). The best that can be said for petitioner's analogy is that, if a substantive deportation provision is (like public employment legislation) to be measured by some theory of reasonableness or arbitrariness, the standard of acceptability is much lower [16] and many consider-

[15] For an older listing of deportation provisions, see Clark, *Deportation of Aliens from the United States to Europe* (1931), pp. 60–69; and Van Vleck, *The Administrative Control of Aliens* (1932), pp. 3–22, 83 *et seq.* The current general deportation provisions are contained in Section 241 of the Immigration and Nationality Act of 1952, 66 Stat. 163, 204. The exclusion process is discussed in *Van Vleck, op. cit. supra,* at 3–22, 33 *ff.*

[16] See *Harisiades,* 342 U. S. at 590 ("a fantasy or a pretense"; "no possible grounds"), affirming 187 F. 2d 137 (C. A. 2) at 141 (giving as an example of an assumedly invalid statute, "that all blue-eyed aliens be deported").

ations forbidden in the area of public employment may properly be taken into account.

This fundamental differentiation stems, as the Court has pointed out (342 U. S. at 585 *ff*), from the root fact that the alien, so long as he does not become naturalized, is not fused into the American community. He bears neither the full obligations of the citizen nor the citizen's undivided allegiance to this country; and Congress can rightly consider that his failure to become naturalized generally bespeaks an indifference to, or rejection of, full participation in American life. In this clashing world of sovereign states, moreover, the country cannot unilaterally deprive itself of a recognized and traditional "power of defense and reprisal"—often harsh and "bristl[ing] with severities"—against the unfriendly or unfavorable actions of foreign states. 342 U. S. at 587–589, 591. The alien's tenuous status is the price he must pay for not unequivocally throwing in his lot with this nation in a world which is not yet one.

B. THE DETERMINATION BY CONGRESS IN SECTION 22 TO MAKE DEPORTABLE ALIENS WHO AT ANY TIME AFTER ENTRY HAVE BEEN MEMBERS OF THE COMMUNIST PARTY IS AMPLY SUPPORTED BY THE LEGISLATIVE FINDINGS AND BY ADMINISTRATIVE AND JUDICIAL DECISIONS

If Congressional power to deport is plenary and unlimited, as many of the decisions of this

Court suggest (*supra,* p. 13 *ff,*)[17] there is no need to go further in order to uphold the validity of Section 22 of the Internal Security Act of 1950. Congress has made its meaning plain; it has ordered the deportation of aliens who, at any

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[17] Congress appears to have viewed its power as absolute. See S. Rep. No. 2230, 81st Cong., 2d Sess., p. 26 (reporting on the very provision here in issue):

> It is well established by numerous decisions of the Supreme Court that every sovereign nation has the power, inherent in its sovereignty, to forbid the entrance of aliens or to admit them upon such conditions as it may prescribe (*United States ex rel. Knauff* v. *Shaughnessy*, Supreme Court, Jan. 16, 1950; *Nishimura Ekiu* v. *United States*, 142 U. S. 651, 1892). A corollary to that essential power for its self-preservation is the inherent power of a sovereign to deport aliens. (See *Tiaco* v. *Forbes*, 228 U. S. 549, 1913.) The authority of Congress over the admission of aliens is plenary, and it may exclude them altogether or prescribe the terms and conditions upon which they may enter and remain in the country. (See *Lapina* v. *Williams*, 232 U. S. 78, 1914; *Wong Wing* v. *United States*, 163 U. S. 228, 1896.)

See also the following statement by Senator Ashurst during the debate on the 1940 Act (86 Cong. Rec. 8345):

> The United States has plenary power to invite any alien here it chooses to invite, and to exclude an alien at any time for a good reason, for a bad reason, or for no reason at all. The United States has full power, acting within its sovereignty, and it is not a breach of any alien's constitutional rights, to bar him at any time for any reason, or for no reason. In other words, a citizen need not give a reason why he invites a guest, and upon a guest there is certainly imposed the duty of behaving himself as well as the family behaves itself, and if an alien misbehaves, the sovereign plenary power of the Government is complete and full to exclude him at any time.

time after entry, became members of the Communist Party, even though they are no longer members when deportation proceedings are begun.[18] But even if some measure of judicial review remains, the statute must be sustained.

1. *The Harisiades and Carlson rulings in 1952.*—Not only does the *Harisiades* decision affirm that the judiciary assumes, at most, a subordinate role in reviewing Congressional determinations regarding the expulsion of undesirable aliens, but in holding that, on the merits, the provision there in question did not infringe the due process clause of the Fifth Amendment, the decision goes practically the whole road (together with *Carlson* v. *Landon,* 342 U. S. 524) toward validation of Section 22 of the 1950 Act.

(a). In *Harisiades,* the Court upheld the constitutionality of Section 23 of the Alien Registration Act of 1940, 8 U. S. C. (1946 ed.) 137, which made subject to deportation aliens who, at any time after entry, had been members of an organization advocating the overthrow of the government of the United States by force and violence.[19] The organization involved was the Communist

[18] We deal below, pp. 67–69, with the argument that the statute should be interpreted to require the deportation of past members only if they knew of the Communist Party's advocacy of force and violence (Pet. Br. 42).

[19] The statute was upheld against contentions that it was unconstitutional as an *ex post facto* law, and an infringement of the First and Fifth Amendments.

Party of the United States, the aliens had discontinued their membership, and the cases were decided on the assumption that they had not personally shared or known the purpose of the organization (see 342 U. S. at 582–3).[20] That much is

[20] The records in the three cases reported under *Harisiades* v. *Shaughnessy* are perfectly clear that there were no final administrative or judicial findings on the matters of personal belief in force or knowledge that the Party advocated force. As to Harisiades, the Board of Immigration Appeals expressly found "that the evidence of record does not establish that the respondent personally believed in or advocated the overthrow of the Government of the United States by force or violence" (Oct. Term 1951, No. 43, R. 873). Harisiades testified that force was to be used by the Party only defensively, and that he did not himself believe in the use of force and violence (No. 43, R. 38–48).

Coleman testified at her deportation hearing that she never heard anyone advocating the overthrow of the government by force or violence and she herself did not believe in it (Oct. Term 1951, No. 264, Tr. 82). There was no finding of personal advocacy of force or of knowledge that the Party advocated force.

Mascitti testified at his hearing that he heard some speakers advocating the use of violence, that he did not personally believe in the forcible overthrow of the government, that he was not entirely clear as to what the policy of the Party was in that respect, and that he resigned when he discovered, or thought through, the aims and precepts of the Party (Oct. Term 1951, No. 206, Tr. 46–50, 78, 82–3). He also testified that he knew that the Party advocated the establishment of proletarian dictatorship by force or violence in the event that the capitalist class resisted, but that he did not believe that this would happen in the foreseeable future (No. 206, Tr. 17, 46, 48, 49). It was argued to the Board of Immigration Appeals that Mascitti did not know of the unlawful objectives of the Party, but the Board held that it was unnecessary to prove knowledge and also that

also true here: petitioner has been ordered deported because of his discontinued Communist Party membership, in the absence of a showing of subjective advocacy of the Party's ends. The sole distinction is that in *Harisiades* there were administrative findings that at the time the aliens belonged to the Communist Party it taught and advocated the overthrow of the government of the United States by force and violence, while under Section 22 of the 1950 Act, because it makes past or present membership in the Communist Party *per se* grounds for deportation, no such finding is necessary. As a result, there has been no occasion for petitioner to show that at the time of his membership the Party did not advocate the violent

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membership, attendance at meetings, and reading Party literature is automatically equivalent to knowledge (No. 206, R. 17).

The Government presented these cases on the assumption that the aliens did not personally advocate force and did not know of the Party's advocacy of force. In its brief (Brief for the United States, Oct. Term 1951, Nos. 43, 206, 264) at p. 91, the Government stated:

> "some former members of the organization may have been unaware of or not in personal agreement with the policy of forcible overthrow. On these records, it must be assumed that there is no proof that these appellants had such personal beliefs or knowledge. In view of its interpretation of the statute as not requiring proof of more than past membership and the nature of the organization, the Immigration Service had not deemed it necessary to introduce evidence on these subjective matters in its deportation proceedings."

See also pp. 31–49, 87–89, of the Government's brief to the same effect.

overthrow of the government; and it is the lack of opportunity to make such a showing which it must be contended (unless *Harisiades* is to be overruled) violates the due process clause.

Petitioner's position is seriously undetermined, at its very foundation, by the explicit declaration in *Carlson* v. *Landon,* 342 U. S. 524, decided the same day as *Harisiades,* that "We have no doubt that the doctrines and practices of Communism clearly enough teach the use of force to achieve political control to give constitutional basis, according to any theory of reasonableness or arbitrariness, for Congress to expel known alien Communists under its power to regulate the exclusion, admission and expulsion of aliens" (342 U. S. at 535–536). This was said with direct reference to Section 22 of the Internal Security Act,[21] and the only difference was that the aliens

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[21] The Court said immediately before the sentence we have quoted in the text (342 U. S. at 534–535):

> Changes in world politics and in our internal economy bring legislative adjustments affecting the rights of various classes of aliens to admission and deportation. The passage of the Internal Security Act of 1950 marked such a change of attitude toward alien members of the Communist Party of the United States. Theretofore there was a provision for the deportation of alien anarchists and other aliens, who are or were members of organizations devoted to the overthrow by force and violence of the Government of the United States, but the Internal Security Act made Communist membership alone of aliens a sufficient ground for deportation. The reasons for the exercise of power are summarized in Title I of the Internal Security Act.

in the *Carlson* case were charged with present membership in the Communist Party. So the Court has already upheld Section 22 as it applies to present membership, and such aliens need not be given the chance to prove that the Communist Party does not advocate overthrow of the Government by violence. Does petitioner have a greater right to make such a showing because he is charged with past membership?

There would seem little reason to accord less standing to a solemn Congressional declaration as to the past status of the Communist Party than to a finding directed to the present. But, in any event, *Harisiades* seems to us to dispose of the contention that the alien charged with past membership must, unlike the present member, be accorded a hearing on the nature of the Communist Party. The Court held that Congress in "exercising the wide discretion that it alone has in these matters * * *" could eliminate the administrative burden of proving in each case that an alien who had discontinued his Communist Party membership had not "sincerely renounced Communist principles of force and violence * * *" (342 U. S. at 595–596). Under that statute aliens were given no opportunity to present testimony that at the time of the deportation proceeding they were, as individuals, no longer a threat to our national security. Because Congress has such wide discretion in this area, and because there

was reason for Congress to believe that in many cases, if not in most, aliens who ostensibly discontinued their Party membership did not do so in fact, this provision was held not to violate the due process or *ex post facto* clause (see 342 U. S. at 593–596). Significantly, the Court treated the 1940 deportation provision, there involved, as directed mainly at Communists, and paid much attention to the nature and activities of the Communist Party, particularly as Congress had a right to view it. See 342 U. S. at 590–1, 593–4, 595–6.

The statutory change embodied in Section 22 of the 1950 Act also sought to lift from the government a difficult and unnecessary administrative burden, namely, that of introducing again and again in deportation proceedings evidence as to the nature and activities of the Communist Party.[22] This action by Congress is fully sustained by the Court's holding in *Harisiades* that it was proper for Congress to eliminate the burden of distinguishing between sincere and fraudulent disaffiliations from the Communist Party. Even assuming that in the past 30 years there may have been intervals during which the Party did not advocate doctrines inimical to our security

[22] See *infra*, pp. 49, 50–53, 82–87, for a recital of (a) the legislative findings in the 1950 Act on the nature of the Communist Party, (b) the court decisions on that issue, and (c) the number of deportation cases involving the issue since 1920.

(but see *infra,* p. 40 *ff*), the administrative task of ascertaining whether a particular alien's membership coincided precisely with such an interval is similar to, and at least as onerous as, that eliminated by the 1940 provision upheld in *Harisiades.* In fact, the very problem which Congress sought to obviate by the earlier provision would be repeatedly raised if petitioner (and others) were to be allowed to claim as a defense that the Party during their terms of membership had only innocent purposes. It would then become necessary in each case to determine whether the alien's apparent disaffiliation at the time the Party resumed its advocacy of violent overthrow of the government was sincere and genuine and not merely a subterfuge. Moreover, not only would the individual alien's motives in leaving the Party have to be examined, but it would also be necessary to ascertain whether the Communist Party had during the period in question actually relinquished its usual aims and methods.[23] On the basis of this Court's holding in *Harisiades,* Congress has the power to decide that this need not be the government's burden, but that the operating postulate is to be that the Party has always advocated the use of force. And to deprive the alien of the right to show otherwise—not a significant right, in actual fact (see *infra,* pp. 41 *ff*, 50–

[23] Congress was concerned with this problem. See *infra,* p. 48.

54)—is surely no more inadmissible than to make irrelevant a showing of reformation and change, a showing which some aliens could make with far greater ease and possibility of success than they could demonstrate that the Communist Party did not advocate force.

In short, the *Carlson* and *Harisiades* cases, read together, make clear that alien Communists are deportable, and that Congress can reasonably provide that discontinuance of membership in the Communist Party need not be taken into account.[24]

(b). For the most part, petitioner's constitutional argument (Pet. Br. 23, *ff*) consists of (i) an attempt to distinguish the *Harisiades, Coleman* and *Mascitti* holdings and opinion by putting forward factual differences which do not exist, and (ii) a covert attack on that ruling.

(i). Galvan's case is said to be "entirely different from that of the aliens in *Harisiades,* who had been active participants in the inner core of the Communist Party" (Pet. Br. 28–9). But regardless of whether Harisiades can properly be

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[24] In addition to the court below, the Seventh Circuit upheld the 1950 Act, in effect, in *Martinez* v. *Neelly*, 197 F. 2d 462 (C. A. 7), affirmed by an equally divided court, 344 U. S. 916. The Second Circuit's opinion in *Harisiades* (Swan, L. Hand, and A. N. Hand, JJ.) indicates that it felt that Harisiades would be deportable under Section 22 even if there were insufficient evidence in that record (under the 1940 statute) that the Communist Party advocated forcible overthrow. 187 F. 2d 137, 141. See also *Latva* v. *Nicolls*, 106 F. Supp. 658 (D. Mass.).

called a member of the Party's "inner core" (see 342 U. S. at 581–2), certainly Mascitti and Mrs. Coleman, whose cases are governed by the same opinion, were no more "active participants in the inner core" than was petitioner. See 342 U. S. at 582–3. They were purely rank-and-file members, while petitioner held the Party office of educational director of his local unit; their participation in Party activities was at least as small as petitioner avers his were, and the Government did not claim otherwise (see Brief for the United States, Oct. Term, 1951, Nos. 43, 206, 264, pp. 48–9). The *Harisiades* decision plainly cannot be differentiated on this ground.

Great stress is also laid (Pet. Br. 7, 24–5) on the fact that Galvan resigned in 1947, while Harisiades and Mrs. Coleman left in 1939, when the Party dropped aliens, and presumably they resigned for that reason. But Mascitti left the Party in 1929 "apparently because he lost sympathy with or interest in the party" (342 U. S. at 582), and his case is therefore on precisely the same plane as the most favorable view of petitioner's case. Moreover, it is not hard to imagine reasons for leaving the Party in 1947 which would not reveal any actual change of heart. National antagonism to the Party and its objectives was fully apparent, and by then certain steps were being taken against

Party members.[25] Petitioner, an alien subject to deportation, may have been afraid of that consequence of membership.[26]

Most important of all is the total disregard in petitioner's brief of the indisputable but essential fact that the *Harisiades, Coleman,* and *Mascitti* judgments and opinion do not turn on the aliens' personal advocacy of force or their knowledge of the Party's advocacy of that method of change. The records in those cases definitely negatived that assumption (see *supra,* pp. 30–31, n. 20), the Government did not argue on that basis, and the Court did not render its decision on it. There is, therefore, no distinction between this case and *Harisiades* on the score of personal belief or knowledge of the Party's aims.

(ii). What remains of petitioner's argument is largely a reargument, without saying so, of the

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[25] For instance, the Executive Order establishing the loyalty program for federal employees was issued on March 21, 1947. See *Joint Anti-Fascist Committee* v. *McGrath*, 341 U. S. 123, 125. The first *Bridges* deportation proceedings had begun in 1938, and the second was carried on in the 1940's; *Bridges* v. *Wixon*, 326 U. S. 135, was decided in June 1945.

[26] Certain of petitioner's statements, during the inquiry in March 1948, are relevant to the question of why he left the Party. He obviously was fearful of deportation (T. 182). He was "confused" about whether the Communists were serving the best interests of the American people (T. 180). In answer to a query as to his opinion of the Russian form of government, he said: "I don't know much about that system. You don't hear much about it. They keep it pretty quiet" and "I don't know much about the system there, I could not say much about it" (T. 181).

ruling in *Harisiades*. The Court was fully as aware as here of the contentions that rank-and-file members did not know of the Party's real aims, that the Party moved members by appeals to "democracy" and even to patriotism, and that it might be harsh and unfair to deport resident aliens simply because they had once belonged to a subversive organization which had deceived them as to its ultimate objective. It can be fairly said that, though perhaps in less extensive or colorful form, the substance of almost every one of petitioner's arguments was before the Court in the *Harisiades* series. And the Government did not meet these arguments by simply attempting to deny their factual truth (though there is certainly much question as to some of the premises).[27] The validity of the statute was supported on the plenary power of Congress over deportation of aliens, taken together with the facts of history and common knowledge showing that Congress's concern was not a mere "fantasy" or "pretense."

The Court took its stand (as we have already recalled, *supra*, pp. 18–19, 23, 29–31, 33–34) on the breadth of the legislative power. It upheld what was regarded in historical context as "an extreme application of the expulsion power" (342 U. S. at 588). The Court thought that "in the present

[27] Particularly in the cases of Mascitti and Mrs. Coleman, the Government did not urge that the aliens were anything other than rank-and-file members, as Galvan claims to be.

state of the world, it would be rash and irresponsible to reinterpret our fundamental law to deny or qualify the Government's power of deportation". The "world-wide amelioration of the lot of aliens * * * is peculiarly a subject for international diplomacy" and "reform in this field must be entrusted" to the political branches. 342 U. S. at 591. If there is to be a policy of forgiveness and recognition of reformation, it is for Congress to provide (342 U. S. at 595).

We do not feel it necessary to reargue the issues in the *Harisiades, Coleman,* and *Mascitti* cases which were fully heard by the Court only two years ago. The Government's brief in those cases contains a lengthy and detailed discussion of those questions, and the Court's considered opinion has given the authoritative answer.

2. *The history of Section 22.*—This case does differ from *Harisiades* in that the 1950 Act expressly names the Communist Party. We believe, as we have argued (*supra,* pp. 29–36), that the reasoning and holdings of the *Harisiades* and *Carlson* cases support Section 22 even on the assumption that there have been isolated periods when the Communist Party did not teach and advocate the violent overthrow of the Government. But it is not necessary to make that assumption. The history of Section 22 discloses an extensive background of exhaustive study culminating in a finding by Congress that the Communist Party of the United States has at all

times been a threat to the national security. We turn now to consider this legislative history, as well as the judicial and administrative decisions which have consistently upheld the conclusion reached by Congress with regard to the menacing character of the Communist Party.

In 1931 a special committee of the House investigated and reported on Communist propaganda in the United States (H. Rep. 2290, 71st Cong., 3d Sess.). That committee cited the language of the program of the Communist Party as established by the Comintern at the Sixth World Congress, September 1, 1929, at Moscow to the effect that (H. Rep. 2290, *supra,* p. 15):

> The communists consider it unworthy to dissimulate their opinions or their plans. They proclaim openly that their designs can only be realized by the violent overthrow of the entire traditional social order.

The report concluded that (H. Rep. 2290, *supra,* pp. 65–66):

> It is self-evident that the communists and their sympathizers have only one real object in view, not to obtain control of the Government of the United States through peaceful and legal political methods as a political party, but to establish by force and violence in the United States and in all other nations a "soviet socialist republic" to which they often refer in their literature as a "dictatorship of the prole-

tariat." These facts have been repeatedly substantiated at the hearings of the committee.

In 1935, the McCormack committee of the House, which was charged with the investigation of Nazi and other propaganda, found "both from documentary evidence submitted to the committee and from the frank admission of Communist leaders * * *" that the objectives of the Party included the overthrow by force and violence of the Government of the United States. H. Rep. 153, 74th Cong., 1st Sess. (1935) p. 12. It concluded that the Party "is a party recognized on an international scale, governed and controlled by a constitution and rules emanating from the Communist International with headquarters at Moscow in the Soviet Union, and dedicated to the overthrow of the government by violence and force." H. Rep. 153, *supra,* p. 21.

In 1939, extensive hearings before the House Committee on Un-American Activities informed Congress that in 1929 the Soviet Union, acting through the Communist International, ejected Lovestone and Gitlow from the leadership of the Communist Party of the United States and replaced them with Foster and Browder.[28] Current evidence of foreign control of the Party was fur-

[28] Hearings before House Committee on Un-American Activities on H. Res. 282, 76th Cong., 1st Sess. (1939) vol. 7, pp. 4432, 4671.

nished to Congress when, with the signing of the Hitler-Stalin Pact in August 1939, resistance to Nazi aggression suddenly became an "imperialistic war" in the view of American Communists. Also, between 1938 and April 1940, Congress had observed how the ideological allies of Hitler in Austria, Czechoslovakia and Norway had aided in subjecting those countries to Nazi rule.

Thus, by 1940, Congress was not merely concerned with the old-fashioned concept of domestic insurrection, but with the more subtle and dangerous situation in which a local totalitarian political group, whether Communist or Nazi, is the actual or potential fifth column ally of the totalitarian government by which it is controlled. Section 23 (a) of the Alien Registration Act of 1940, in making deportable aliens who had at any time been members of a group advocating the violent overthrow of the Government, was part of a larger statute, part of which, known as the Smith Act, was upheld by this Court in *Dennis* v. *United States,* 341 U. S. 494, and part of which required the registration of aliens. The same Congress also enacted the Voorhis Act of October 17, 1940,[29] requiring the registration of "Every organization subject to foreign control which engages in political activity," and understood that the Communist Party of the United States would

[29] 54 Stat. 1201, 18 U. S. C. 2386.

be required to register.[30] The *Harisiades* opinion expressly recognizes that the 1940 Congress directed the deportation provision there in question against alien Communists because of "alarm about a coalition of Communist power without and Communist conspiracy within the United States" (see 342 U. S. at 590–1).

Between 1940 and 1950, Congress observed that Communist parties everywhere are simply the fifth column of Soviet aggression. Where they have obtained power, as in Czechoslovakia, they have done so by violence, destroyed their political opponents, and degraded their native lands into satellites of the Soviet Union. Where they have not obtained power, they carry on, in the United States and elsewhere, espionage, sabotage, and propaganda on behalf of the Soviet Union. American troops fought with the United Nations in Korea to check Communist aggression, while this country has entered into costly and unparalleled military alliances to discourage Communist aggression elsewhere.

Section 22 of the Internal Security Act originated in S. 1832, 81st Cong., 2d sess., which was

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[30] H. Rep. 2582, 76th Cong., 3d sess. Immediately, the Communist Party of the United States ostensibly withdrew from the Communist International to avoid registration under the Voorhis Act. See resolution adopted at the 1940 Convention of the Communist Party, reproduced in the record in *Dennis* v. *United States*, 341 U. S. 494, vol. XIV, pp. 11180–11181.

passed by the Senate on August 9, 1950, and was later incorporated by the Senate into the internal security bill (S. 4037, 81st Cong., 2d sess.). S. 1832 was introduced by Senator McCarran in May 1949,[31] and was the subject of extensive hearings, between May and September 1949, before the Subcommittee on Immigration and Naturalization of the Senate Committee on the Judiciary, under the heading of *Communist Activities Among Aliens and National Groups.*

After these hearings, S. 1832 was revised to provide, *inter alia,* for the deportation of aliens who have at any time been members of the Communist Party of the United States. It was passed by the Senate without debate (96 Cong. Rec. 12058, 12060). However, the accompanying report of the Senate Committee on the Judiciary (S. Rep. 2230, 81st Cong., 2d Sess.), after summarizing and quoting from the testimony of former high officials of the Communist Party during the 1949 hearings, set forth the conclusions upon which the provision is based, as follows (pp. 10, 11, 12, 16):

> Since the rise of Soviet Russia during the past three decades, the problem of subversives has become a vital consideration in

[31] As originally introduced, S. 1832 would have provided stricter controls over visas and other travel documents, and strengthened the laws governing the exclusion and deportation of subversive aliens, without specifically referring to the Communist Party of the United States.

any evaluation of national immigration and naturalization policies. The impact of world events upon our immigration system can no longer be ignored. As an international conspiracy, communism has organized systematic infiltration of our borders for the purpose of overthrowing the democratic Government of the United States by force, violence, and subversion.

* * * * *

The Communist International has in its employ a network of agents whose sole function is to organize and promote Communist activity, sabotage, espionage, propaganda, and terrorism. These agents are sent into the United States and other countries under the policy of the Communist high command. Although some of the agents are native-born Americans or have acquired citizenship through naturalization, a large majority of them are aliens.

* * * * *

The Comintern realizes that it cannot rely on native Americans because to do so involves the constant risk of having its work impeded or exposed. It is to be expected that the loyalty of a native American or of a citizen of long standing would occasionally reassert itself, despite the most intensive Communist indoctrination.

The break with the Communist Party by men like Louis Budenz, Howard Rushmore, Jay Lovestone, Benjamin Gitlow, and others offers conclusive proof to Moscow that it

can only rely on its own chosen agents for the work of destroying America. In the event of a clash of arms between the Soviet homeland and this country, the Communists would find it even more difficult to rely upon native Americans and those of foreign origin who become Americanized.

* * * * *

It is a well-established fact that both the leadership and membership of the Communist Party is recruited overwhelmingly from alien ranks. During the course of its 30 years of existence in this country the Communist Party has been ruled exclusively by alien agents appointed by the Communist International headquarters in Moscow.

The high command of the party in this country invariably has been dominated by aliens or persons of foreign origin. These facts have been documented by the testimony presented before the subcommittee.

* * * * *

From the statements made before the subcommittee, as well as the general evidence gathered—the history of the Communist movement, the changes of its policies, the manner of its expression, the utterances of the Comintern leadership—the conclusion is inescapable that the Communist Party and the Communist movement in the United States is an alien movement, sustained, augmented, and controlled by European Communists and the Soviet

> Union. The severance of this connection and the destruction of the life line of communism becomes, therefore, substantially an immigration problem.

After reviewing existing law, the Committee noted (pp. 24–25) that:

> * * * While Congress has clearly proscribed classes of aliens which are to be excluded from admission or deported after admission, there is the obvious difficulty of establishing that certain aliens or organizations do advocate overthrowing the Government by force or violence. It is inherent in the tactics of such persons and organizations that their real intentions be concealed under an aura of legitimacy in order to accomplish their purpose. Thus, though it may be common knowledge that certain organizations advocate such beliefs, satisfactory proof of that position offers a formidable obstacle. The evidence developed by the subcommittee should remove any doubt about the Communist Party's advocating the overthrow of our Government by force or violence in order to consummate its plans of a world-wide Communist totalitarian dictatorship. Yet, membership in the Communist Party, without positive proof that it so advocates the overthrow of government by force and violence, is insufficient grounds for deporting such an alien member.

The substance of the Committee's conclusions is embodied in the extraordinary findings which Congress made in Section 2 of the Internal Security Act as to the purposes and methods of communism, "as a result of evidence adduced before various committees of the Senate and House of Representatives" (64 Stat. 987–989). The first of these findings states:

> There exists a world Communist movement which, *in its origins, its development, and its present practice,* is a world-wide revolutionary movement whose purpose it is, by treachery, deceit, * * * and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries throughout the world through the medium of a world-wide Communist organization. [Emphasis supplied.] [32]

The bitter debate over the internal security bill did not relate to Section 22. Indeed, the dissenting minority of the Senate Committee on the Judiciary stated that "We do not quarrel with the provision * * * for the exclusion of alien members of the Communist Party of the United States, or with the later provision [Section 22 of the Internal Security Act] for their deportation. It is undisputed that the Communists of the world, including the United States, are the

[32] The findings in Section 2 are reprinted in the Appendix, *infra*, pp. 82–87.

fifth column allies of the Soviet Union." S. Rep. 2369, Part 2, 81st Cong., 2d sess., p. 14.[33]

In the context of the legislative findings, Section 22 is thus a substantially unanimous Congressional determination, based on years of legislative investigation, that the Communist Party of the United States has at all times been a foreign-controlled organization devoted to the ultimate overthrow of the government by violence and, more immediately, acting as a fifth column in aid of Soviet aggression.[34]

3. *Judicial and administrative adjudications as to the Communist Party.*—As the Court has observed, "* * * a declaration by a legislature concerning public conditions that by necessity and duty it must know, is entitled at least to great respect." *Block* v. *Hirsh,* 256 U. S. 135, 154. When such a declaration by Congress is supported not only by its own investigations but by repeated judicial and administrative determinations that the Communist Party has advocated the violent overthrow of the Government, it should not be disturbed in the absence of the most

[33] Section 22 was not contained in the internal security bill as it passed the House (see H. Rept. No. 3112, 81st Cong., 2d Sess., p. 48; 96 Cong. Rec. 15287). It was added by the Senate and included in the conference substitute. The debate in the House on the conference bill, and in overriding the Presidential veto, did not touch directly on Section 22.

[34] Section 22 has now been embodied in the Immigration and Nationality Act of 1952 (Pub. Law 414, 82d Cong.) as Section 241 (a) of that Act.

extraordinary circumstances. See *Skeffington* v. *Katzeff*, 277 Fed. 129 (C. A. 1) (covering the period 1919–1920); *Antolish* v. *Paul*, 283 Fed. 957 (C. A. 7) (early 1920's); *Ungar* v. *Seaman*, 4 F. 2d 80, 81 (C. A. 8) (1912–1920); *Ex parte Jurgans*, 17 F. 2d 507, 511 (D. Minn.) (early 1920's); *Ex parte Vilarino*, 50 F. 2d 582 (C. A. 9) (1926–1929); *Murdoch* v. *Clark*, 53 F. 2d 155 (C. A. 1) (the 1920's); *United States ex rel. Yokinen* v. *Commissioner of Immigration*, 57 F. 2d 707 (C. A. 2) (the late 1920's); *Kjar* v. *Doak*, 61 F. 2d 566 (C. A. 7) (the late 1920's); *In re Saderquist*, 11 F. Supp. 525 (D. Me.), affirmed, 83 F. 2d 890 (C. A. 1) (1930–1935); *United States ex rel. Harisiades* v. *Shaughnessy*, 187 F. 2d 137 (C. A. 2) (1925–1939); *United States* v. *Dennis*, 183 F. 2d 201 (C. A. 2) (1945–1948).

In the course of affirming the *Dennis* conviction (341 U. S. 494), in upholding the related deportation provisions in the same Alien Registration Act of 1940 (*Harisiades* v. *Shaughnessy*, 342 U. S. 580, see *supra*), in sustaining the anti-Communist affidavit requirement of the Taft-Hartley Act (*American Communications Ass'n* v. *Douds*, 339 U. S. 382), and in enforcing the deportation and bail provisions ofthe Internal Security Act of 1950 (*Carlson* v. *Landon*, 342 U. S. 524), this Court has recently recognized that the facts revealed by judicial trials and Congressional investigations beginning in 1931 (H. Rep. 2290, 71st

Cong., 3d Sess.) down to date, when read in the light of recent political and military developments, and underscored by persistent espionage and other fifth column activity by Communists in this country and elsewhere on behalf of the Soviet Union, amply justify the conclusion of Congress that the Communist Party has advocated overthrow of the Government by force and violence. See also *Adler* v. *Board of Education*, 342 U. S. 485.[35]

Years of administrative adjudications likewise stand behind the legislative findings embodied in the Internal Security Act in 1950. The Immigration and Naturalization Service estimates that from 1918 to September 1950 (when the Internal Security Act was passed) approximately 200 aliens were adjudged to be members of the Communist Party (or its predecessors or affiliates) and in each case the Party was administratively

[35] In *Schneiderman* v. *United States*, 320 U. S. 118, an attempt by the Government to denaturalize for fraud, the Court held that the evidence in the record as to the Communist Party's advocacy in 1927 of force and violence was not indisputable enough to meet the requirement that proof of fraud in naturalization be "clear, unequivocal, and convincing". But the Court specifically refused to pass for itself on the issue of the Party's advocacy of force (320 U. S. at 158), and declared that it was not deciding "what interpretation of the Party's attitude toward force and violence is the most probable on the basis of the present record, or that petitioner's [Schneiderman's] testimony is acceptable at face value." The case turned wholly on the special requirements of proof in denaturalization proceedings, and does not constitute an adjudication as to the true nature of the Communist Party.

determined, under the deportation statute as it then read, to advocate the forcible overthrow of the Government.[36]

These judicial and administrative findings are significant, not only because they give great weight and sanction to the legislative determination, but also because they indicate the smallness of the possibility that petitioner, or any other alien, could show that the Communist Party did not advocate force and violence.[37] That theoretical choice is practically non-existent, and Congress has really done no more than eliminate the burden of introducing again and again in deportation proceedings evidence, documentary and oral, as to the Party's nature and activities.[38]

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[36] Almost half of these adjudications were in the period 1918–1920, and the other half in the period from 1921 to September 1950. There were about 75 such adjudications in the decade from 1930 to 1940.

[37] Petitioner admitted membership in the Communist Party from 1944 to January 1947. *Supra*, pp. 4–5, *infra*, pp. 71–72. The conspiracy charged in the *Dennis* case began in April 1945 and continued to July 1948, 341 U. S. at 495, 498, 547–8, 561.

[38] See *Milasinovich* v. *The Serbian Progressive Club*, 369 Pa. 26, and *Albert Appeal*, 372 Pa. 13, in which the Supreme Court of Pennsylvania held that judicial notice may be taken of the fact that the Communist Party advocates the overthrow of the government by force. In the latter case, the court stated that (372 Pa. at 20–21):

> It would seem almost an absurdity of legal procedure to continue to submit to various juries in individual cases a question so readily and authoritatively determinable from the mere perusal of the writings of the acknowledged founders and protagonists of the Communist movement * * *.

By Section 22 Congress has substituted for a process of routine proof in individual cases a uniform rule based on its own investigations, prior judicial and administrative proceedings, and facts of current and past history known to all.[39]

4. *Congressional power, under the due-process clause, to deport specifically named classes of aliens.*—As we have just shown (*supra,* pp. 40–54), legislative investigations and findings, judicial and administrative decisions, and common knowledge, all combine to reinforce Congress' determination in the 1950 Act that the Communist Party advocates, and has always advocated, forcible overthrow of the Government and that alien Communists should be deported. As in *Harisiades*—which itself refers explicitly to the connections of the Communist Party with force and with the Soviet Union (342 U. S. at 590–1) (see *supra,* pp. 23, 29 *ff*)—Congress' view cannot be called a "fantasy or a pretense"; it cannot be said

[39] It is important to note that under the pre-1950 system (upheld in *Harisiades*) a finding by the immigration officials that the Communist Party advocated force, based on the usual documentary evidence and the testimony of one or more persons who were key members of the Party during the period of the alien's membership, would be upheld on *habeas corpus*, even though there was other evidence to the contrary. See *Tisi* v. *Tod*, 264 U. S. 131, *Bilokumsky* v. *Tod*, 263 U. S. 149, *Vajtauer* v. *Commissioner*, 273 U. S. 103. all affirming and applying the rule that the immigration officials' findings of fact must be upheld if supported by some evidence, even though the finding might be held erroneous on a *de novo* judicial appraisal.

that "there were then or are now no possible grounds on which Congress might beleve that Communists in our midst are inimical to our security" (342 U. S. at 590). That being so, the basic rationale of *Harisiades* (and its predecessor decisions) compels the upholding of Congress' deliberate choice to deport past and present Communists.

The practice of Congress, in the 1950 Act, of specifically naming the Communist Party, instead of continuing to use the more general classification of the 1940 Act which does not refer in terms to the Party, has support, as we have pointed out, in the history of the Party. It was upheld as to deportation of present Party members in *Carlson* v. *Landon,* 342 U. S. 524, 534–536 (*supra,* pp. 32–33). The naming of the Communist Party in the oath provision of the Taft-Hartley Act was sustained in *American Communications Ass'n* v. *Douds,* 339 U. S. 382, and *Osman* v. *Douds,* 339 U. S. 846, 847.

The practice of designating a class by name also has the support of judicially-validated deportation precedents relating to other groups. *Fong Yue Ting* v. *United States,* 149 U. S. 698, 717, tells us that the root of the Chinese exclusion and deportation laws was the belief that "the presence within our territory of large numbers of Chinese laborers, of a distinct race and religion, remaining strangers in the land, residing apart by them-

selves, tenaciously adhering to the customs and usages of their own country, unfamiliar with our institutions, and apparently incapable of assimilating with our people, might endanger good order, and be injurious to the public interests * * *. See also *Wong Wing* v. *United States,* 163 U. S. 228, 237 ("aliens whose race or habits render them undesirable as citizens"). But Congress did not take the various components of these charges against the Chinese and fashion a general category of deportable aliens which would not mention the Chinese by name but was intended to cover them by its general description. Congress, as in this case, chose to specify instead of to generalize; it listed by name the class the bulk of whose members it found to be undesirable residents, even though it may be assumed that there were individual Chinese who could plainly not be characterized as "strangers in the land". For many years, "anarchists" have been excluded by name and held deportable, and the Court has upheld the statute even as applied to one professing to be a philosophical anarchist "innocent of evil intent". *Turner* v. *Williams,* 194 U. S. 279, 294.[40]

[40] In this connection, it is appropriate to recall the other general classes of aliens Congress has classified as deportable. See footnote 15, *supra*, p. 26. A survey of these categories will show instances in which persons who fall into a deportable class may well be individually and personally worthy. *E. g.*, Sections 241 (a) (3) and (8) of the 1952 Act, dealing with aliens who become public charges or are institutionalized at public expense for mental disease.

Also, in enacting Section 22, Congress was proceeding by conscious analogy [41] to the Alien Enemy Act of 1798 which authorizes the deportation of aliens who are nationals of a country at war with the United States or by which invasion of American territory is "threatened." As this Court noted in *Harisiades* v. *Shaughnessy*, 342 U. S. at 587:

> War, of course, is the most usual occasion for extensive resort to the power. Though the resident alien may be personnally loyal to the United States, if his nation becomes our enemy his allegiance prevails over his personal preference and makes him also our enemy, liable to expulsion or internment, and his property becomes subject to seizure and perhaps confiscation. But it does not require war to bring the power of deportation into existence or to authorize its exercise. Congressional apprehension of foreign or internal dangers short of war may lead to its use.

By the Alien Enemy Act, Congress conferred upon the President power to deport aliens who are nationals of a hostile country without regard to whether a particular alien had ever evidenced the slightest hostility to the interests of the United

[41] See S. Rep. 2230, 81st Cong., 2d Sess., pp. 16–17; *The Immigration and Naturalization Systems of the United States*, S. Rep. 1515, 81st Cong., 2d Sess., pp. 788–789.

States.[42] Presidential action under the Act is reviewable only upon the issue of whether the particular alien falls into the category of enemy aliens. *Ludecke* v. *Watkins*, 335 U. S. 160.

The Alien Enemy Act dealt with problems of internal security created by actual or threatened hostilities between national states and with the techniques of warfare which existed in the early 19th century. In 1950, Congress was dealing with the threat to the peace and security then and now confronting the United States. It has found that Communists everywhere have as their objectives the violent overthrow of non-Communist governments and serving the interests of the Soviet Union. It has found that the Communist movement here has been heavily laden with aliens and that Soviet control of the American Communist Party has been largely through alien Communists. *Supra*, pp. 45–48. It has concluded, in effect, that the possibilities of political violence and treachery, particularly in a time of crises, on the part of alien members of the Communist Party are too great for the United States to assume the risks of attempting to distinguish between those members of the Party who have knowledge of and share its purposes, and those who do not, or of

[42] That the Fifth Congress which enacted the Alien Enemy Act did not regard the use of its powers over aliens to protect the security of the nation as limited to periods of actual war, is emphasized by the fact that the House twice rejected proposals to delete the words "or threatened". Annals of Congress, 5th Cong., 2d Sess., pp. 1786, 1792.

determining the sincerity of those who assert they have left the Party and rejected its principles.

If a statute passed during time of war specifically named the enemy countries whose citizens were to be detained or deported, it would be just as valid as if it referred to "enemies" generally, with precisely the same intention and meaning. For instance, if we were at war with the Soviet Union, or a war was threatened, Congress could specifically order the expulsion of nationals of that particular country. The Constitution certainly does not bar treating in the same way alien members of the organization which the past thirty years have demonstrated to be merely the *alter ego* of the aggressive Communist state. For, unlike the Alien Enemy Act, the applicability of Section 22 of the Internal Security Act of 1950 is determined, not by the accidents of birth and ancestry, but by an alien's voluntary membership in the Communist Party. As this Court said in *American Communications Association* v. *Douds*, 339 U. S. 382, 391:

> The fact that the statute identifies persons by their political affiliations and beliefs, which are circumstances ordinarily irrelevant to permissible subjects of government action, does not lead to the conclusion that such circumstances are never relevant. * * * If accidents of birth and ancestry under some circumstances justify an inference concerning future conduct, it can hardly be doubted that voluntary affili-

> ations and beliefs justify a similar inference when drawn by the legislature on the basis of its investigations.

In sum, the overwhelming testimony received by Congress, confirmed by events of common knowledge, as to the purposes of the Communist Party and as to the major role played by aliens in organizing the Party and keeping it under the control of the Soviet Union, demonstrates that Section 22 is a reasonable exercise of Congress' plenary powers over aliens in order to protect the security of the United States, and does not violate the due process clause. And the history of expulsion legislation is sufficient to prove that Congress is entitled to make this judgment for itself and need not remit to individual hearings the issue of the Communist Party's nature and tenets.[43] See also *infra*, p. 61 *ff* (on the *ex post facto* and attainder provisions of the Constitution).

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[43] The basic fallacy in petitioner's argument (Pet. Br. 46–52) that due process is denied because no hearing is allowed on the nature of the Party is the failure to distinguish deportation from a criminal proceeding. The difference is pointed out clearly in the dissent in *United States* v. *Spector*, 343 U. S. 169, 174, an opinion on which petitioner relies heavily (Pet. Br. 49). Referring to a Chinese deportation case, Justice Jackson said in *Spector*, a criminal case (343 U. S. at 176, fn. 3):

> That Court thereby made it clear that there is a great distinction between deportation itself and a deportation order that may be made the basis of subsequent criminal punishment. It is that distinction which we press for here.

See also *Wong Wing* v. *United States*, 163 U. S. 228, discussed *infra*, pp. 63–64.

C. THE DEPORTATION OF PAST COMMUNISTS DOES NOT VIOLATE THE EX POST FACTO OR BILL OF ATTAINDER PROVISIONS OF THE CONSTITUTION

Although his petition does not mention or refer to the bill of attainder and *ex post facto* clauses in Article I, Section 9, clause 3, of the Constitution, but relies solely on the due process clause (see Pet. 4–6),[44] petitioner's brief discusses Article I, Section 9, clause 3 at some length (Pet. Br. 53–57, see also 40–42). While we ordinarily would not consider those issues properly here (see Brief for the Respondents, *Tom We Shung* v. *Brownell*, No. 241, this Term, pp. 13–14), we do not urge the Court to pass them in this case since they are expressly raised in the pending petition for certiorari to the Ninth Circuit in *Garcia* v. *Landon*, No. 279, Misc., also involving the validity of Section 22 of the Internal Security Act of 1950. See the Government's memorandum on the petition for the writ in *Garcia*, pp. 6–8.

1. *Ex post facto clause.*—The opinion in *Harisiades* addressed itself to a like contention and determined that there was no violation of the *ex post facto* clause (see 342 U. S. at 593–596).[45]

The secondary fallacy in petitioner's argument is his erroneous assumption that the rules applicable to citizens who are public servants are the same as those governing aliens whom Congress desires to deport. We discuss this contention *supra*, p. 24 *ff*.

[44] The "Question Presented" simply presents the issue whether Section 22 of the Internal Security Act of 1950 "is Constitutional" (Pet. 3).

[45] For a detailed discussion of the *ex post facto* clause and retrospective legislation, see the Government's brief in *Harisiades* (Oct. Term, 1951, Nos. 43, 206, 264), at pp. 102–116.

That ruling is *a fortiori* here, for when petitioner joined the Communist Party the 1940 deportation provision (upheld in *Harisiades*) had been on the books for several years, and he was even more adequately forewarned than were Harisiades, Coleman, and Mascitti who had all left the Party before 1940.

Petitioner argues as if the Congress had suddenly, in 1950, made aliens deportable for past membership in a wholly innocent organization like the Red Cross, which no one previously had any reason to suspect (see, especially, Pet. Br. 40–42). But, in the last decade and a half (and particularly after the passage of the Smith Act as a part of the Alien Registration Act of 1940), even those aliens who did not have personal knowledge of the Communist Party's advocacy of force would have had to live a hermit's life to be unaware that joining the Party was at least treading on dangerous ground and that many Americans, including some in the highest quarters, believed that the Party's goal was subversion and not peaceful change.[46] No alien who joined the Party during this period could be caught wholly

[46] Documentation at least as extensive as that set forth at Pet. Br. 29 *ff* and in the Appendix to Petitioner's Brief could be produced to show the mass of official and popular opinion, widely disseminated throughout the country, that the Party's methods and objectives included forcible subversion. Because the extensive holding of this opinion is a fact known to all, we refrain from matching petitioner's array of references and quotations.

unawares; the risk was known and knowable. Petitioner took the risk because, according to a Government witness, he wanted advancement and position in his union (T. 127), or because, as he said, he thought "they [*i. e.*, the Communists] were serving the interests of the American people" (T. 180). But the risk was knowingly taken, whether for those reasons or others, and petitioner is in no position to urge that he was innocently caught in a trap not of his own making.

2. *Bill of attainder clause.*—Section 22 does not violate the bill of attainder provision of Article I, Section 9, clause 3, of the Constitution, by specifically naming the Communist Party. See *Carlson* v. *Landon,* 342 U. S. 524, 535–6 (*supra,* pp. 32–33). A bill of attainder is a legislative act which inflicts punishment without a judicial trial. *United States* v. *Lovett,* 328 U. S. 303, 315. As the Court has held again and again, deportation may be harsh, drastic, and severe, but it is not a criminal proceeding and it is not a punishment. *Carlson* v. *Landon,* 342 U. S. 524, 537; *Harisiades* v. *Shaughnessy,* 342 U. S. 580, 594–5.[47] The bill of attainder cases (*Cummings* v. *Missouri,* 4 Wall. 277; *Ex parte Garland,* 4 Wall. 333, and *Pierce* v. *Carskadon,* 16 Wall. 234) on which petitioner

[47] To the same effect, see *Mahler* v. *Eby,* 264 U. S. 32, 39; *Fong Yue Ting* v. *United States,* 149 U. S. 698, 709, 730; *Bugajewitz* v. *Adams,* 228 U. S. 585, 591; *Wong Wing* v. *United States,* 163 U. S. 228, 237.

relies (Pet. Br. 53–5) have been explained by the Court as proceeding "from the view that novel disabilities there imposed upon citizens were really criminal penalties for which civil form was a disguise" and "have never been considered to govern deportation," 342 U. S. at 595. And the specific holdings in *Harisiades, Mahler,* and *Bugajewitz,* that deportation is not a punishment for the purpose of the *ex post facto* clause, also dispose of the contention that a deportation statute can be a bill of attainder which necessarily inflicts punishment. See the concurring opinion in *United States* v. *Lovett,* 328 U. S. at 323.

Moreover, deportation is one legislative field in which there is a long history of naming specific groups—especially the Chinese and the anarchists. See *supra,* p. 55 *ff.* Of the Chinese deportation cases, *Wong Wing* v. *United States,* 163 U. S. 228, contrasting deportation of the Chinese and their punishment by imprisonment, most aptly demonstrates the inapplicability of the bill of attainer clause to deportation. A resident alien Chinese was summarily sentenced to 60 days at hard labor and then ordered deported, under the statute involved in *Fong Yue Ting* v. *United States, supra,* 149 U. S. 698 (discussed *supra,* pp. 14–16, 21, 55–56), for having been found in the United States without a certificate of residence. The sentence of imprisonment was condemned as punishment without a judicial trial. "It is not

consistent with the theory of our government that the legislature should, after having defined an offence as an infamous crime, find the fact of guilt and adjudge the punishment by one of its own agents." 163 U. S. at 237. See *United States* v. *Spector,* 343 U. S. 169, 174–177 (Jackson J., dissenting). But the deportation of Chinese was upheld, following *Fong Yue Ting.* "No limits can be put by the courts upon the power of Congress to protect, by summary methods, the country from the advent of aliens whose race or habits render them undesirable as citizens, or to expel such if they have already found their way into our land and unlawfully remain therein." 163 U. S. at 237. Deportation was not to be considered as punishment.

Even if, despite this history and the Court's prior rulings, each deportation provision is to be individually tested to see whether it is an attempt to inflict punishment (see Pet. Br. 54–5), Section 22 is clearly valid. *Harisiades* establishes that there is a sufficient connection between past membership in a subversive organization and present desirability as a resident for Congress to take action to expel such aliens, not as punishment but in order to rid the country of a potential threat. 342 U. S. at 590–1, 595–6. That is what Congress sought to do in the 1940 Act and also in the 1950 legislation. The legislative history of both statutes establishes without doubt that Congress

thought the residence in this country of aliens who had previously been members of a subversive group was undesirable and dangerous. *Supra,* p. 40 *ff.* There was no purpose or attempt to punish. The history of the provision extends over a period of 30 years and this history shows that it is a direct method of accomplishing the Congressional objective of terminating the residence of such aliens, not an indirect attempt to reach some other result. Certainly, four distinct Congresses, in 1918, 1920, 1940, 1950, would not have entertained improper motives. It cannot therefore be said that this law was enacted, as were the Civil War statutes and the one involved in *United States* v. *Lovett,* 328 U. S. 303, to *punish* ascertained individuals or classes. Rather, it is a deliberate Congressional judgment that a particular class of aliens represents a danger to the welfare of the country and that its license to remain here should be revoked. Cf. *Hawker* v. *New York,* 170 U. S. 189, 196–7.

D. THE DEPORTATION OF PAST COMMUNISTS SUCH AS PETITIONER DOES NOT VIOLATE THE FIRST AMENDMENT

Neither the petition for certiorari in this case nor that now pending in *Garcia* v. *Landon,* No. 279 Misc., refers to the First Amendment (see *supra,* p. 61), but petitioner urges it in his brief on the merits (Pet. Br. 38–39). The authoritative answer for this case is given, once again, by the *Harisiades* decision (342 U. S. at 591–2). The

Court said that "the test applicable to the Communist Party has been stated too recently [in *Dennis* v. *United States,* 341 U. S. 494] to make further discussion at this time profitable." Petitioner was a member of the Communist Party, and his case is therefore precisely the same as *Harisiades.* Moreover, petitioner's membership in the Party came, at least in part, during the *Dennis* period (*supra,* pp. 4–5, 53; *infra,* pp. 71–72). See also *Carlson* v. *Landon,* 342 U. S. 524, 535–6 (*supra,* pp. 32–33).

E. SECTION 22 DOES NOT REQUIRE KNOWLEDGE BY THE ALIEN OF THE COMMUNIST PARTY'S ADVOCACY OF FORCIBLE OVERTHROW OF THE GOVERNMENT

In arguing that Section 22 should be construed as ordering the deportation of past members only if they knew of the Party's advocacy of violence (Pet. Br. 42–44), petitioner again brings forward a point presented neither in his petition nor Garcia's (*supra,* p. 61). The issue was extensively briefed by the Government in the *Harisiades* case (Brief for the United States, Oct. Term, 1951, Nos. 43, 206, 264, at pp. 31–47), and in upholding those deportations on the records before it (fn. 20, *supra,* p. 30), the Court must have rejected the contention that knowledge of the Party's aims was necessary under the 1940 Act.

In summary, the Government showed in *Harisiades* that (a) the pertinent deportation provi-

sions, both before and after their amendment in the 1950 Act, reveal a precise delineation between charges based on the alien's personal knowledge and beliefs and those predicated solely on his membership in designated organizations; (b) the legislative history of the Anarchist Deportation Acts of 1918 and 1920 shows clearly that Congress intended to deport alien members of the prohibited groups, regardless of whether their membership was maintained with knowledge of the denounced objectives; (c) the legislative history of the Alien Registration Act of 1940 shows the same purpose; (d) administrative and judicial rulings since 1918 have taken the same position; and (e) neither in the Internal Security Act of 1950 nor in Public Law 14 (Act of March 28, 1951), 82d Cong., 1st Sess., 65 Stat. 28, did Congress change this meaning.

If the 1940 Act does not require knowledge on the part of the alien, as this Court implicitly held in *Harisiades,* the 1950 statute must obviously be read the same way. For the Internal Security Act sought to "strengthen" the provisions of the former law relating "to the exclusion and deportation from the United States of subversive aliens." H. Rep. No. 3112, 81st Cong., 2d Sess., p. 54. As the Court said in *Harisiades* (342 U. S. at 590): "* * * we have an Act of one Congress [*i. e.,* the 1940 Act] which, for a decade, subsequent Congresses have never repealed but have

strengthened and extended." It is inconceivable that the 1950 Act retreated from the consistent three-decades-long legislative, administrative, and judicial construction of the prior law.[48]

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[48] In the Immigration and Nationality Act of 1952 (which became effective in December 1952), Congress has made provision for discretionary relief from deportation of certain aliens who would be otherwise deported as past Communists. Section 244 (a) (5) and 244 (c), 66 Stat. 163, 215, 216. The conditions of eligibility for such relief are: physical presence in the United States immediately following "the commission of an act, or the assumption of a status, constituting a ground for deportation"; proof that during all of this period the alien has been and is a person of good moral character; the alien must not have been served with a final order of deportation issued pursuant to the 1952 Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and the alien must be a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent or child, who is a citizen or an alien lawfully admitted for permanent residence.

Under Section 244 (c), Congress must concur in the Attroney General's suspension of deportation before it can become effective.

We are informed that favorable action has been taken by the executive in a few cases under this provision. The case of *Latva* (which is reported sub. nom. *Latva* v. *Nicolls*, 106 F. Supp. 658 (D. Mass., Wyzanski, J.) is now under administrative consideration.

II

THERE WAS SUFFICIENT EVIDENCE TO SUSTAIN THE CHARGE THAT PETITIONER HAD BEEN A MEMBER OF THE COMMUNIST PARTY OF THE UNITED STATES

Petitioner contends strenuously that there was insufficient evidence to sustain the charge that he had been a member of the Communist Party of the United States after his entry into the United States (Pet. Br. 11–23). He makes the argument in this Court even though both courts below have specifically determined that the evidence was adequate,[49] and the "two-court" rule makes such concurrent findings "final here in the absence of very exceptional showing of error." *Comstock* v. *Group of Institutional Investors,* 335 U. S. 211, 214. Moreover, in deportation *habeas corpus* proceedings, the Court does not "review the evidence beyond ascertaining that there is some evidence to support the deportation order" (*Bridges* v. *Wixon,* 326 U. S. 135, 149) and it is not enough to suggest, or even to prove, that the administrators erred either in deciding "that evidence introduced constituted legal evidence of the fact or in drawing a wrong inference from the evidence." *Tisi* v. *Tod,* 264 U. S. 131, 133; *Bilokumsky* v. *Tod,* 263 U. S. 149; *Vajtauer* v.

[49] The District Court found that "there was substantial evidence to support the warrant of deportation" (R. 14), and the Court of Appeals held that the evidential contention was "wholly without merit" (R. 33; 201 F. 2d at 306).

Commissioner, 273 U. S. 103; *Costanzo* v. *Tillinghast*, 287 U. S. 341, 342–3.[50]

1. What is the evidence here? In his voluntary statements given on March 17 and 31, 1948 (T. 173–188),[51] petitioner freely admitted that he had been a *member* of the Communist Party from 1944 to 1946, and repeated this admission several times. He testified in detail as to the circumstances of his joining, naming the organizer who had induced him to join and the place where he had joined, and giving his reasons for joining. He stated that the last meeting he attended was in January 1947 (T. 188). At the close of the March 17 statement he said that he realized he had "made a mistake in joining the Communist Party," and offered to "rejoin" the Party as an informer if the Government would be lenient toward him (T. 182). Subsequently, in the March 31 statement, he denied having anything to do

[50] In the administrative hierarchy, the finding made by the hearing officer was affirmed by the Assistant Commissioner of the Immigration and Naturalization Service, and then by the Board of Immigration Appeals, which determined, "after careful consideration of all the evidence of record as well as the representations of counsel throughout" that petitioner was a member of the Party after entry.

[51] Transcripts of these statements were introduced as evidence, marked Exhibits 5 and 6, at petitioner's deportation hearing on January 12, 1950 (T. 104–105). By stipulation, these transcripts, and all other testimony previously taken in the case, were made part of the record in the final December 12, 1950, hearing, *supra*, p. 6.

with the distribution of Communist literature, but did not repudiate his prior admission that he had joined the Communist Party. In fact, he expressly affirmed that the statements he had given on March 17 were true (T. 184). He repeated his offer to give information about the Party if he were allowed to remain in the United States.[52]

In addition to petitioner's own admissions, a Government witness, Mrs. Meza, testified at the deportation hearing held on January 12, 1950, and gave further testimony as to petitioner's Communist Party membership. Her testimony, which by stipulation was made part of the record of the final December 12, 1950, hearing (on the basis of which petitioner was ordered deported), disclosed, *inter alia,* that petitioner attended meetings of the Spanish Speaking Club unit of the Communist Party, at San Diego which were

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[52] There is no doubt that Galvan gave a flat "yes" to the question "Then you were a *member* of the Communist Party from approximately 1944 to 1946 when you dropped out. Is that correct?" (T. 179) (emphasis added). He attended "about ten or twenty" meetings (T. 179) before he "dropped out" in January 1947. Well-known Communist booklets—including some of the classics of Soviet Communism—were distributed at the meetings and their sale and distribution promoted. He looked at some of these documents (T. 186–187). Lectures were also given about these books and they were discussed at the meetings (T. 188). The indisputable foundation and assumption of both March interviews was that petitioner was a *member* of the Communist Party from sometime in 1944 to January 1947.

attended only by Communists (T. 114–115), that petitioner was elected to the office of Educational Director of that unit (T. 118–119), and that in conversations with her petitioner had discussed his Party membership, indicating dissatisfaction with the way he had been treated by the Party (T. 127). Mrs. Meza mentioned at least one of the persons previously named by petitioner as associated with him in Communist Party activities (T. 113, 124). A reading of her testimony (including the cross-examination) can leave no doubt that she testified that (a) she joined the Communist Party in August 1946, (b) the Spanish Speaking Club was a Party unit at that time (and not merely a "front" organization), (c) that Galvan was a member of the Party at that time (as she was), and remained such until some time in 1947, and (d) he was elected educational director of that Party unit.[53]

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[53] Mrs. Meza testified that she joined the Communist Party in San Diego in August 1946, her membership first being solicited in May 1946 (T. 112). She knew Galvan from April or May 1946 (T. 114). In answer to the question "To what unit or units did you belong, of the Communist Party?", she answered "When I first joined I was a member of the National City and Chula Vista unit and shortly afterwards I was transferred to the Spanish Speaking Club in San Diego" (T. 114). She saw Galvan at at least seven meetings of the Spanish Speaking Club unit which "were unit meetings that were closed meetings to Communist Members of that local unit" (T. 114–115). Her membership card in the Communist Party "was issued to me either in the first or second meeting of the Spanish Speaking Club after I

2. Petitioner's attack on this evidence—which furnishes much more than substantial support for the administrative finding of membership in the Communist Party—takes several forms. An attempt is made, first, to discredit Galvan's voluntary admissions in March 1948, before the deportation proceedings began, as somehow untrustworthy (Pet. Br. 12–13). But there is no reason for this Court—let alone the immigration authorities or the two courts below—to go behind petitioner's unequivocal statements. Cf. *Bilokumsky* v. *Tod*, 263 U. S. 149, 151, 155–156. He was then a 37-year-old adult, who had been in this country for 30 years, spoke and understood English very well (as his entire testimony, then and later, clearly reveals); he signed every page

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became a member" (T. 116). She testified that Galvan held an office in "the Spanish Speaking Club unit of the Communist Party of the United States" (T. 119). She was present at an election of officers of the unit in October or November 1946 and Galvan was elected "Educational Director or Secretary of Education; I don't recall the official title" (T. 119). Dues were collected at the meetings she attended and Galvan was present when dues were collected (T. 120).

She had a conversation with "Bob" (Galvan)—which she placed in May or June of 1947—in which "he told me in that conversation when he had joined the Communist Party and why he had joined it" and why he was dissatisfied (T. 126–127). This conversation took place when Galvan took her home "from a meeting, a Communist meeting that we had both attended" and he told her "why he had joined the Communist Party and gave her a summary of his history in the Communist Party" (T. 134); they also discussed "other members of the Communist Party" (T. 136).

of the typed form of both March statements in a firm and practiced hand, and agreed at the end of the second interview that he had thoroughly understood all the questions asked him (T. 188). One gathers from his answers that he is quite acute and not at all slow-witted.[54] The immigration inspector (Chandler) who interviewed him was a witness at one of the later deportation hearings (T. 102–110), and testified as to the circumstances of the interviews. Before Galvan's statement was taken down stenographically, there was a preliminary period of questioning (T. 109), so that he was fully aware of the nature of the inquiry; all the matters developed in the informal discussion were covered in the formal questioning (T. 109). Galvan did not ask for counsel, and preliminary interrogation in the absence of counsel is not improper. *Bilokumsky* v. *Tod*, 263 U. S. 149, 156. And, contrary to petitioner's assertions, the inspector's questioning, far from being antagonistic or hostile, brought out much of the material which petitioner now records and uses as in his favor.[55]

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[54] Mrs. Meza's account of her conversation with him (*supra*, pp. 72–73) also indicates that he is not dull-witted but quite capable of understanding what he is doing and what goes on about him. He held offices in his Union local and in the CIO Council in San Diego (T. 177), as well as being elected educational director of his Communist Party unit.

[55] We note, as bearing on his present claims, petitioner's curious changes of position on Party membership, in the course of this proceeding. At the outset, he made the ad-

Secondly, it is said (in the brief on the merits, for the first time) that it was the Communist Political Association which petitioner joined in 1944, not the Communist Party, and there is no proof of membership in the subsequently reconstituted Party (Pet. Br. 12 *ff*). Whether it was the Political Association or the Party Galvan originally joined in 1944,[56] his own testimony and that of Mrs. Meza show plainly that he was a member of the *Party* in 1946, particularly after

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missions of March 1948. Then, when deportation proceedings were begun, he claimed his privilege against self-incrimination and refused to answer questions about Communist Party membership or about his prior admissions (T. 93). Still later, he simply denied that he had made the admissions in 1948, and declared (despite the overwhelming evidence to the contrary) that he had not understood the questions asked at that time and thought they related to some non-subversive organization like the "F. E. P. C." (T. 39–50). It may very well be that the immigration authorities could draw inferences adverse to petitioner from this twice-repeated change of position. Cf. *Bilokumsky* v. *Tod*, 263 U. S. 149, 153–154 (proper to infer alienage from failure to claim citizenship at deportation hearing).

Changes in his position between that taken in the District Court, the Court of Appeals, and in the petition for certiorari, on the one hand, and that now taken in the brief on the merits, on the other, are noted *infra*, pp. 76, 79–80.

[56] Petitioner consistently spoke of it, in the March 1948 inquiry, as the *Party*, and testified that he joined sometime in 1944, without specifying the month. His own brief (p. 17, fn. 8) points out that in California the Party did not dissolve and re-create itself as the Association until May 1944. On the other hand, he did testify that when he was asked to join he "was told that it wasn't a party at that time; that it was a political association" (T. 179).

August 1946 (when Mrs. Meza joined) and into 1947, either January 1947 (as he testified) or May or June 1947 (as she testified). *Supra,* pp. 71–73.[57] He may have begun to be dissatisfied with the Party, but he remained a participating member until 1947, and it is clear that he knew that the entity of which he was an active member was the Communist Party. Hardly any proof of "membership" could be better than these direct admissions and direct testimony by a co-member as to actual membership in the Party, attendance at closed party meetings, and election to party office; and membership during that period (1946–1947) is sufficient under the statute which requires no more than proof of some post-entry Party membership (*supra,* pp. 2–4).

There is simply no warrant in this record for petitioner's complex effort (Pet. Br. 20–23) to infuse into the case an issue-of-law as to the meaning of the word "member" in Section 22 of the 1950 Act. This is a case of "membership" and not merely of "affiliation," and it is also a case of participating membership and not that of a passive member whose name merely appears on a membership roll. On petitioner's own evidence and that of Mrs. Meza, any jury or administrative tribunal would be justified in finding that he was a participating member of the

[57] According to the *Dennis* case, the Communist Party was reconstituted in about April 1945; the conspiracy there charged began in April 1945 and continued to July 1948. 341 U. S. at 495, 498, 547–8, 561.

Party during a substantial portion of the period covered by the *Dennis* conviction, and for many months after he was dissatisfied (as he now states) with the turns in Party policy.[58]

The third component of petitioner's wholesale assault on the findings (Pet. Br. 14 ff.) calls to mind the mixture of conjecture, doubt, and suggestion commonly addressed by skilled advocates to factfinders in order to persuade them to disregard damaging testimony which appears to be unequivocally against the clients. All the factors stressed in petitioner's brief—*e. g.*, the Communist Party's supposed attitude toward aliens after 1939, the reconstituted Communist Party's assumed attitude toward members of the Communist Political Association, the refined and complicated exegesis of Mrs. Meza's words, etc.—would be fair argument to convince the immigration inspector not to take petitioner's and Mrs. Meza's testimony at face value. But now that the finding has been made and affirmed, something

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[58] On his own evidence and that of Mrs. Meza, petitioner's Party membership falls far outside the type of unreal "membership" referred to by Senator McCarran in the excerpt partially quoted and paraphrased at Pet. Br. 16, 21, 43. Galvan's membership was active and voluntary, and not accidental, artificial, unconscious, or in appearance only. It was not membership by operation of law or while a minor. See *supra*, pp. 67–69, and Brief for the United States in The *Harisiades* case (Oct. Term 1951, Nos. 43, 206, 264), at pp. 44–47. It is of interest that the same contention was suggested by Mascitti (Brief for the Appellant, Oct. Term 1951, No. 206, at pp. 30-32).

weightier is obviously required to move this Court to hold that testimony directly in point does not constitute substantial evidence. It is not enough to conjure up all the possible re-interpretations and explanations of that direct testimony.

Finally, petitioner seeks to attack the finding of Party membership by reiterating that he did not advocate violence or have reason to know that the Party did (Pet. Br. 17). We have already dealt with this contention in discussing the validity and meaning of the statute. *Supra,* pp. 29–36, 38, 40 *ff,* 55–60, 67–70. Congress has said that proof of Party membership is enough for deportation, and there is no requirement that the alien personally believe in violence or know that the Party does.[59]

3. As the foregoing review has shown, the evidence of record plainly calls for the finding

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[59] In the petition for certiorari (Pet. 7–8), but not in the brief on the merits, petitioner advances the wholly frivolous contention that, whatever the sufficiency of the evidence as to Communist Party membership, because the Party was referred to as the "Communist Party" (except in two instances where it was called the "Communist Party of the United States") the testimony was insufficient to prove that he was a member of the Communist Party of the United States. However, petitioner's and Mrs. Meza's testimonies show that he joined the Communist Party and participated in its activities in San Diego, California. It is beyond conjecture that it is the Communist Party of the United States that operates in San Diego, California. Petitioner's argument would be baseless in any event; membership in any branch or subdivision of the Communist Party, American or foreign, is grounds for deportation (see 8 U. S. C. (Supp. V) 137 (2) (C) (iv), *supra,* pp. 2–4).

that petitioner was an active member of the Communist Party after its reconstitution in 1945. At the very least, there was substantial evidence to warrant that administrative finding, and there was no denial of procedural due process.[60] "Upon a collateral review in *habeas corpus* proceedings, it is sufficient that there was some evidence from which the conclusion of the administrative tribunal could be deduced and that it committed no error so flagrant as to convince a court of the essential unfairness of the trial."

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[60] In his petition for certiorari (Pet. 9–14), but not in the brief on the merits, petitioner claims that he was denied a fair hearing because a new charge was lodged after the record previously made in the case had been introduced by stipulation. *Supra*, pp. 6–7. This contention is wholly unsubstantial. The regulations (8 C. F. R. Sec. 151.2 (d)) authorized the lodging of additional charges if it developed during the hearing that there were grounds for deportation in addition to those contained in the warrant of arrest. On September 23, 1950, after the warrant had issued, petitioner became subject, by the enactment of Section 22 of the Internal Security Act of 1950, to deportation because of membership in the Communist Party. When this new charge was lodged in December 1950, petitioner's then counsel was asked if he desired a continuance to secure evidence on the new charge, but flatly declined the offer (T. 36). Nor did counsel seek to withdraw his previous consent to introduction of the prior transcripts (including petitioner's statements in March 1948), or indicate in any way that he would not have agreed to the introduction of the previously developed record had he known of the new charge, or attempt to have the hearing reopened for new evidence. In these circumstances, there is no justification for the claim of denial of a fair hearing.

Vajtauer v. *Commissioner,* 273 U. S. 103, 106, and see other cases cited *supra,* pp. 70–71.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be affirmed.

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JANUARY 1954.

APPENDIX

Section 2 of the Internal Security Act of 1950, 64 Stat. 987, provides:

> As a result of evidence adduced before various committees of the Senate and House of Representatives, the Congress hereby finds that—
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> (1) There exists a world Communist movement which, in its origins, its development, and its present practice, is a world-wide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries throughout the world through the medium of a world-wide Communist organization.
>
> (2) The establishment of a totalitarian dictatorship in any country results in the suppression of all opposition to the party in power, the subordination of the rights of individuals to the state, the denial of fundamental rights and liberties which are characteristic of a representative form of government, such as freedom of speech, of the press, of assembly, and of religious worship, and results in the maintenance of control over the people through fear, terrorism, and brutality.

(3) The system of government known as a totalitarian dictatorship is characterized by the existence of a single political party, organized on a dictatorial basis, and by substantial identity between such party and its policies and the government and governmental policies of the country in which it exists.

(4) The direction and control of the world Communist movement is vested in and exercised by the Communist dictatorship of a foreign country.

(5) The Communist dictatorship of such foreign country, in exercising such direction and control and in furthering the purposes of the world Communist movement, establishes or causes the establishment of, and utilizes, in various countries, action organizations which are not free and independent organizations, but are sections of a world-wide Communist organization and are controlled, directed, and subject to the discipline of the Communist dictatorship of such foreign country.

(6) The Communist action organizations so established and utilized in various countries, acting under such control, direction, and discipline, endeavor to carry out the objectives of the world Communist movement by bringing about the overthrow of existing governments by any available means, including force if necessary, and setting up Communist totalitarian dictatorships which will be subservient to the most powerful existing Communist totalitarian dictatorship. Although such organizations usually designate them-

selves as political parties, they are in fact constituent elements of the world-wide Communist movement and promote the objectives of such movement by conspiratorial and coercive tactics, instead of through the democratic processes of a free elective system or through the freedom-preserving means employed by a political party which operates as an agency by which people govern themselves.

(7) In carrying on the activities referred to in paragraph (6), such Communist organizations in various countries are organized on a secret, conspiratorial basis and operate to a substantial extent through organizations, commonly known as "Communist fronts", which in most instances are created and maintained, or used, in such manner as to conceal the facts as to their true character and purposes and their membership. One result of this method of operation is that such affiliated organizations are able to obtain financial and other support from persons who would not extend such support if they knew the true purposes of, and the actual nature of the control and influence exerted upon, such "Communist fronts".

(8) Due to the nature and scope of the world Communist movement, with the existence of affiliated constituent elements working toward common objectives in various countries of the world, travel of Communist members, representatives, and agents from country to country facilitates communication

and is a prerequisite for the carrying on of activities to further the purposes of the Communist movement.

(9) In the United States those individuals who knowingly and willfully participate in the world Communist movement, when they so participate, in effect repudiate their allegiance to the United States, and in effect transfer their allegiance to the foreign country in which is vested the direction and control of the world Communist movement.

(10) In pursuance of communism's stated objectives, the most powerful existing Communist dictatorship has, by the methods referred to above, already caused the establishment in numerous foreign countries of Communist totalitarian dictatorships, and threatens to establish similar dictatorships in still other countries.

(11) The agents of communism have devised clever and ruthless espionage and sabotage tactics which are carried out in many instances in form or manner successfully evasive of existing law.

(12) The Communist network in the United States is inspired and controlled in large part by foreign agents who are sent into the United States ostensibly as attachés of foreign legations, affiliates of international organizations, members of trading commissions, and in similar capacities, but who use their diplomatic or semidiplomatic status as a shield behind which to engage in activities prejudicial to the public security.

(13) There are, under our present immigration laws, numerous aliens who have been found to be deportable, many of whom are in the subversive, criminal, or immoral classes who are free to roam the country at will without supervision or control.

(14) One device for infiltration by Communists is by procuring naturalization for disloyal aliens who use their citizenship as a badge for admission into the fabric of our society.

(15) The Communist movement in the United States is an organization numbering thousands of adherents, rigidly and ruthlessly disciplined. Awaiting and seeking to advance a moment when the United States may be so far extended by foreign engagements, so far divided in counsel, or so far in industrial or financial straits, that overthrow of the Government of the United States by force and violence may seem possible of achievement, it seeks converts far and wide by an extensive system of schooling and indoctrination. Such preparations by Communist organizations in other countries have aided in supplanting existing governments. The Communist organization in the United States, pursuing its stated objectives, the resent successes of Communist methods in other countries, and the nature and control of the world Communist movement itself, present a clear and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress, in order to provide for the common

defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the existence of such worldwide conspiracy and designed to prevent it from accomplishing its purpose in the United States.

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